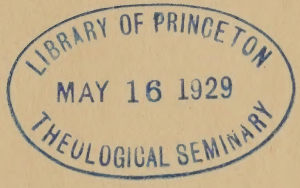
MARRIAGE AND THE STATE

RICHMOND AND HALL



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MARRIAGE AND THE STATE

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Based Upon Field Studies of the Present Day Administration of Marriage Laws in the United States

BY

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The more closely any period of history is studied, the more clearly does it appear that the mistakes and troubles of an age are due to a false spirit, an unhappy fashion in thought or emotion, a tendency in the human mind to be overwhelmed by the phenomena of the time, and to accept those phenomena as the guide to conduct and judgment, instead of checking and criticising them by a reasoned standard of its own. Men come to think that it is their business to explain, rather than to control, the forces of the hour.

—*J. L. AND BARBARA HAMMOND*

CHAPTER I

INTRODUCTION

IT IS necessary in any discussion to start with an assumption of some kind or with more than one. As a starting point for this analysis of the present administration of marriage laws in the United States, the assumption is made, without argument, that the monogamic form of marriage is the best form. There are those who question the social value of monogamy. This book is not for them.

It has also seemed clear to us that the relation of the state to marriage will continue to be influenced by lawmakers, administrators, and the clergy. At present there are in round numbers some 178,000 of these (about 130,000 religious officiants empowered to solemnize marriages, 30,000 civil officiants, 10,000 marriage license issuers and their deputies, and 7,650 members of state legislatures) who are directly or indirectly responsible for interpreting the public intent to each candidate for matrimony. Marriage customs, in fact, have been shaped first by the development of ecclesiastical law and later by civil law. But they have also been molded by the way in which these laws have been applied. There is some-

thing, therefore, to be said for an approach to the subject which has been almost wholly neglected, namely, for an objective inquiry supplementary to the long accumulated experience of the churches and the legal profession—an inquiry, that is, into what now actually happens when two persons apply to the state for permission to marry.

Not only in the law but in all the social sciences the habit of observing what happens is becoming a wholesome check upon theory and tradition. In such observation and reporting, modern social work has developed a method of its own which has been used in gathering material for the present volume. It must be acknowledged, however, that at best the findings and conclusions here summarized are only a beginning. Marriage is a large subject and we have selected only one aspect of it for consideration. Accordingly, that one aspect is projected into a sharp relief which throws it out of its due relation to the more personal side of marriage. And even so, only a part of a part is presented. There are 48 states and the District of Columbia in the American federation, each with its separate history, its own marriage laws, its own way of administering them. It has been necessary perforce to use the sampling method and to select certain states fairly representative of different frontier beginnings, different statutory provisions, different climates and geographical conditions, different industrial characteristics, and different racial influences.

I. METHOD OF INQUIRY

Before a selection of states could be made, even with reference to the diversity of their laws alone, it was necessary to examine and compare the laws of all the states. Here was initial delay, and since there were no trustworthy, up-to-date digests of American marriage laws we were forced to make one of our own that would cover at least their social aspects. This analysis was published in 1919,[1] a year before the plans for the present volume were first mapped out. During 1928 one of the last steps in its preparation was the compilation by a lawyer of a much fuller manual of marriage laws and decisions,[2] which will appear simultaneously with the present volume on administration. The earlier analysis served an important purpose in that it supplied a number of leads for the field work begun in 1920.

Massachusetts was the first state selected for relatively thorough field inquiry. Legislation in New England on the subject of marriage had from the beginning followed a direction of its own, and Massachusetts was taken as representative of the whole New England group. Our search everywhere was to be primarily for good procedures and good results provided they were at all typical. Quite early

[1] Hall, Fred S., and Brooke, Elisabeth W.: American Marriage Laws in Their Social Aspects. A Digest. Russell Sage Foundation, New York, 1919 (Out of print).

[2] May, Geoffrey: Marriage Laws and Decisions in the United States. A Manual. Russell Sage Foundation, New York, 1929.

this Commonwealth had adopted forward-looking laws that contained carefully guarded administrative features. This was a second reason for our selection.

Illinois, the most populous and representative of the important North Central tier of states, showed a very different legislative history from that of the New England group. It also contained the country's second city in size. This state was our next choice.

New York State was our third choice. Of the original 13 states in the Union, the only 2 that were included in our study were New York and Massachusetts. Court decisions in these 2 had been cited so frequently in the decisions of other state judiciaries that their selection seemed inevitable.

Alabama's geographical position, her social conditions that contrasted sharply with those of the other states selected, together with the fact that hers was the first legislature in the South to pass a law requiring medical certification for marriage, account for our fourth choice.

Wisconsin, it was found, had adopted several marriage measures not yet generally accepted by other states. As she had a reputation for legislative and administrative experiments, here was the basis for a fifth choice.

Finally, California and Oklahoma were selected to complete this list of 7 states to be studied with relative thoroughness. From the large number of bills relating to marriage that were being introduced in the California legislature about the time our

study began, we inferred that that state must be especially interested in the subject. Oklahoma was chosen as representative of conditions that had developed from frontier settlements of a relatively recent date. The influence of frontier conditions and of the nature of the original settlements upon later marriage developments in each of the 7 states is a subject to which we shall return presently.

Field work, however, was not confined to these 7. Many valuable clues to marriage conditions in other parts of the country came to us through correspondence, through the 5 newspaper clipping bureaus to which we subscribed, and through legislative provisions that appeared to be out of the ordinary. Whenever possible these clues were followed up by field visits to the states in question.

A total of 96 cities and towns in 30 states were visited in the course of all our field work;[1] 44 of these places were in the 7 states especially studied. In each of these 7 states the plan was to have the field investigator study the largest city, and usually to study it first of all. Then, in order to assure the inclusion of smaller cities and towns and rural counties, other license issuing districts were visited.

In communities thus selected the marriage license issuers and their deputies, if there were any, were interviewed. These officials were given full opportunity to describe in their own way the methods

[1] In 83 of these cities and towns the interviewing was done by Alice M. Hill.

which they were in the habit of employing. In addition, the conduct of the office was observed—its method of dealing with candidates coming for licenses, the type of record kept, and so on. Permission was sought and almost always obtained to transcribe the last hundred or more of the licenses fully recorded, though sometimes, in busy offices, these had to be taken from the most recent license book not in active use. Such transcripts served not only as a check upon the description of methods that had already been given us, but were useful later as a basis for statistical analyses and comparisons. Full reports of all interviews and documents pertaining to them were forwarded to us at once by the investigator as a basis for close supervision.

The next step after studying a given license office was to seek a number of interviews with disinterested witnesses who lived in the community, such as judges, other court officials, clergymen, lawyers, social workers, doctors, and so on. In an attempt to get clues to actual instances and cases, rather than to depend upon general impressions, anyone likely to be able to give us additional insight into the methods of the local office was sought out. The number of witnesses available varied. In some places there were very few, in others as many as 30 to 40 were visited.

In addition to these field interviews in 96 places, further insight into local situations came to us

from correspondence with 588 places that were not visited at all. By all these different methods some inquiry, varying greatly in degree of thoroughness of course, was made into administrative methods in 684 unduplicated places in 48 states and the District of Columbia.

In every social study one of the most serious problems to be dealt with is the sequence of the different processes involved and the amount of time that should be allotted to each. No one, probably, has yet found the ideal solution. Should one know every book and every document bearing upon the subject to be studied before any attempt at observation in the field is made? Or should one boldly plunge in with only a limited preparation, trusting in this way to get fresh leads for more thorough library research at a somewhat later stage? The latter is the method we followed. First of all we had to study the laws, but after the great mass of field data had been gathered and reduced to some sort of shape, there were gaps revealed in it, comparisons of part with part to be made, that gave the later library search and correspondence with authorities an entirely new significance.[1] Our task, as we understood it, was not merely to report field findings and explain them but, as suggested

[1] In an article on "Research in Medical Schools" by Dr. Florence Sabin of the Rockefeller Institute for Medical Research (*Science* for April 1, 1927) appears the following sentence: "There are investigators who start with a masterly concept of known facts; there are others, equally valuable, often more original, who prefer to analyze the detail of literature when their work is already well under way."

by the motto to this volume, it included a search for the practicable next steps by which many of the conditions revealed might be bettered. For this further reason it was necessary to compare our field results with the law reports of marriage cases, with the discussions that had preceded recommendations made on this subject by the Commissioners on Uniform State Laws,[1] with congressional documents describing various attempts to add a marriage amendment to the federal Constitution, with the histories of the 7 states we had studied intensively, and with many books dealing more generally with marriage or with the functions of government.

This meant delay while extended further search was made, with the result that visits paid between 1920 and 1923, supplemented by such reinvestigation as has been possible since, are here made the basis of recommendations published in 1929. Although in the present instance the delay is not a serious one, because we have done enough revisiting and checking up to be assured that there have been few changes in administrative procedure in the interval, for social studies in general the time allotment between field observation, mastery of the literature of the subject, and interpretation presents many difficulties.

After the field work had been nearly completed but long before this final study was ready for pub-

[1] Chapter IX, Evasive Out-of-State Marriages, pp. 192–197.

lication, two subsidiary studies were printed. The first grew out of field visits to Wisconsin and described the administration of the Wisconsin marriage law as it relates to the venereal diseases.[1] The second dealt with child marriages in the United States.[2] The latter study described a social situation in this country that is further explained and illustrated in the present volume.

Without dwelling at greater length upon methods that will be apparent enough as the material we have gathered is analyzed in these pages, there are two introductory subjects that deserve brief mention here. The first of these is the origin of the marriage license system and the second is the effect that frontier conditions have had upon the development of that system in this country.

II. MARRIAGE AND THE LICENSE SYSTEM ON THE FRONTIER

The term "marriage license" has its origin in early English ecclesiastical practice, in accordance with which a bishop's license or archbishop's license released candidates for marriage from the obligation of publishing their banns in church. On the Continent also, in order that marriages might not be "maliciously hindered," dispensations of a similar nature though not called licenses had been author-

[1] Hall, Fred S.: Medical Certification for Marriage. Russell Sage Foundation, New York, 1925.

[2] Richmond, Mary E., and Hall, Fred S.: Child Marriages. Russell Sage Foundation, New York, 1925.

ized by the Council of Trent in the sixteenth century. But gradually the regulation of matrimonial matters came to be transferred, in large part at least, from ecclesiastical law and ecclesiastical courts, acting independently or for the state, to the state itself. In many Continental countries, however, a religious ceremony, supplementary to the obligatory civil one and not required by law, continues to this day to be usual.

England did not accept Continental procedure but, through a series of changes following the Reformation, finally adopted an optional or dual system instead. Candidates for matrimony had their marriage solemnized either by church dignitaries or by civil officers. Under this optional system which, with the exception of Maryland and West Virginia,[1] has been adopted in this country too, a large number of different persons, ecclesiastical and civil, have the right to perform the marriage ceremony. But on the continent of Europe there is centralized administration in all the larger countries. In each of their local communities only one officiant is authorized—a civil one—and these officials representing the state at the ceremony are under governmental supervision. Such a system, though not practicable in this country, has at least one great advantage over ours in that it makes possible a uniform method of inquiry into the qualifications

[1] In Delaware the Mayor of Wilmington is the only civil officiant in the state.

of candidates and establishes a dependable permanent record of the result.[1]

Under the dual system of England and America it became necessary, in order to assure any enforcement of existing marriage laws and any competent registration of marriages, to provide some substitute for the centralized control exercised on the Continent. This substitute was even more necessary in America, as a matter of fact, than in England with its church establishment. With us the optional or dual system immediately became a multiple system in which the clergy of many different denominations as well as a variety of civil officials, including justices of the peace even, were authorized to perform the marriage ceremony. To bring order out of chaos, the device finally adopted by both countries was the marriage license.[2]

A sense of backgrounds will always have to enter into social reforms that relate to marriage and marriage laws in the United States if reform is to be effective. A background of laws alone or of laws and court decisions alone will not suffice. The picturesque and varied beginnings of the American pioneering period—more varied, probably, than those of any other country of the modern world—cannot be ignored.

[1] The necessity for a permanent record is discussed in detail in Chapter XIV, Records and Penalties, p. 294.

[2] The English marriage license is, however, quite limited as an administrative device for it does not apply to marriages solemnized under the auspices of the Church of England.

When men and women came from other lands to settle this new one, they brought with them their religion, their conceptions of what constitutes law and order, their traditions, customs, and personal prejudices. Sometimes in their older world they had held political or religious views that were not those of the majority, in which case they brought the habit of dissent with them. If from different old-world backgrounds they met and mingled over here, reasons for divergence multiplied. Only very slowly, therefore, were customs established in the new home that could be respected and observed by all or most of the fellow colonists. Later, when new territory became available for settlement, and the more adventurous spirits in states that had been settled early again pushed forward into the wilderness, this transplanting process, which gradually modified differences and effected their assimilation, was repeated.

Modification was inevitable. The pioneers found in this new land an absence or scarcity of schools, of ministers of religion, of notaries, of legal instruments. There were physical hardships unknown before. Usually there was great disparity of numbers as between the sexes. It takes no great stretch of imagination to realize the relation of all these conditions to marriage customs. In some of the new settlements, moreover, a dominant and progressive people found themselves face to face with an older or a more backward civilization, or else

climatic and industrial conditions happened to favor the importation of an alien race as slave laborers. Often there were wars and raids in the new land, with so little security and protection for anyone that human life became precarious. Especially on the later frontier, as in California and Oklahoma, it happened that changes of economic status came with startling suddenness, that fortunes were quickly made and lost. For the most part, however, frontier life was not only perilous but laborious. The cultivation of the soil was a hard won cultivation. Agriculture and the other prevailing industries, such as hunting, lumbering, and trapping, were tasks that made home seem very attractive by contrast.

Any attempt to picture here these frontier conditions and their effects by citing a few of the facts about colonial and state beginnings can be no more than a thumbnail sketch, but even so the attempt may help to account for some of the present day administrative details relating to marriage and the license system that will presently be described.[1] As already stated, the more intensive field inquiries made in preparation for this book were confined to 7 states—Massachusetts, Illinois, New York, Alabama, Wisconsin, California, and Oklahoma. Limiting ourselves to these few, what characteristic resemblances and contrasts do we find in their

[1] Nearly all of the historical reading for this section on frontier conditions was the work of Ruth Z. S. Mann, to whom we are also indebted for a large part of the library search made necessary by the plan of this whole study.

frontier period? Social history is often ignored in the histories of our separate states, though sometimes there are published diaries at hand or notes of early travel to give the needed clue.

Beginning with Massachusetts, we find that it shares with the entire New England group of states a development different from that of all other sections of the country. From the very first, there has been a more logical progress in the growth of its marriage law policies, and by contrast with the laws of other states the New England states have taken, as already suggested, their own characteristic line of development.[1] This individuality is attributable to the nature of the earliest New England settlements. In some sections of the United States the first settlers left little mark upon later marriage customs. Whatever old-world ways they had brought with them were soon overlaid by the different habits of later migrants. Accepting Massachusetts as fairly typical of all New England, no such break is apparent there. For two hundred years after the landing at Plymouth, there was only a very slight admixture of foreign stocks in parts of the state that had been earliest settled. The chief modifying influence in those sections had not been from without but from within. It was clear to Plymouth, for example, that the best way

[1] Throughout this chapter, in addition to consulting other sources, we have made use of A History of Matrimonial Institutions, by George Elliott Howard, Chicago, University of Chicago Press, 1904, Vols. 1–3.

to avoid interference from the High Church party that controlled early seventeenth century England was to keep as free as possible from political and religious affiliation with England's government. Ministers of the established church were at that time the only authorized celebrants of marriage in England; in Plymouth, following the custom with which the colonists had become familiar in Holland, civil ceremonies only were countenanced.

Governor Bradford's history of Plymouth Colony tells of an English bishop who questioned Winslow as to marriage celebrations upon his return to England in 1635. "He [Winslow] also confessed, that, having been called to place of magistracy, he had sometimes married some. And further told their lordships that marriage was a civil thing, and he found nowhere in the word of God that it was tied to ministry. Again, they were necessitated so to do, having for a long time together at first no minister."[1]

Whether by foresight or necessity, it is true of the entire New England group of states, and among the older states it is true of this group only, that from the very beginning of settlement the civil authorities have had direct administrative control of the qualifications of all candidates for matrimony. By the country at large such control has been acquired only very gradually. The New England

[1] Bradford's History of Plymouth Plantation. Reprinted by the Commonwealth of Massachusetts in 1901, p. 393.

township was directly responsible for the publication of every notice of intention to marry. During the specified period of publication, objections might be filed. If these objections seemed valid no marriage was allowed. For all candidates who were able to meet the legal requirements the town clerk or other official issued a "certificate of intention" that authorized a marriage ceremony. In 4 New England states this document is called a certificate of intention to this day and not a license, the term now in use everywhere else.

The earliest marriage recorded in Massachusetts as having been celebrated by a minister of religion instead of by a civil magistrate bears the date of 1686. After this the dual system of either civil or religious celebrations gradually became general, but all New England continued to hold to the system of civil banns or "publication" until about the middle of the nineteenth century. Then the custom fell into disuse for more than half a century, except in the state of Maine, where a law requiring 5 days' advance notice before a license could be issued was passed in 1858.[1] This notice was substituted for the earlier method of advance announcement. Although the other states of the New England group failed for quite a long time to follow suit in adopting the Maine substitute, half of the states that now

[1] For a description of the advance notice plan, see Chapter V, Advance Notice of Intention to Marry, pp. 109–119.

follow the five-day advance notice plan are in New England.[1]

Illinois was first settled by the French. It was ceded to the English in 1763. After the American Revolution the lands of the territory were thrown open for sale (1785) with the result that soon there was a great influx of immigration from older states. By 1823 a majority of the population had either been born in the Southern states or was descended from Southerners. "This vanguard of western colonization consisted, in the main, of that middle group of small farmers which is so often forgotten. . . ."[2] When courts of law were established by the English in 1809, "as might be expected, the laws of Kentucky were the most popular in Illinois, and six were adopted from the code of that state."[3]

New York presents a contrast to most of the other colonies in that, true to its present character, the settlement was cosmopolitan from its earliest days. Father Jogues in 1644 reported the inhabitants of Manhattan as speaking 18 different languages and as divided into a number of different religious sects.[4] On the whole, there was religious tolerance under the Dutch. Executive authority, however, underwent in the century before the Revolution

[1] See Table 2, p. 110.

[2] Greene, Evarts B.: Pioneers of Civilization in Illinois. Military Tract Papers, No. 2. Illinois State Reformatory Print [1907?], p. 7.

[3] Laws of the Territory of Illinois, 1809–11. Bulletin of the Illinois State Historical Library, June 1, 1906, p. xi.

[4] Jogues, Rev. Father Isaac: An Account of New Netherland in 1643–4. Privately printed, New York, 1862, pp. 25 and 27.

33 changes, with a corresponding lack of stability in the development of court procedures. Thus, the state of New York received from Dutch and British rule no clearly defined code of marriage customs but rather a medley of inconsistent practices.

We have here certain contrasts with the Massachusetts settlement which help to explain divergent developments in the marriage administration of the 2 states. When Massachusetts and New York were settled the form of marriage by consent alone which is known as common law marriage[1] was still valid in England. But later such marriages were forbidden in that country by the Hardwicke Act of 1753. Massachusetts, however, has never recognized common law marriage, and in 1810 a decision by Chief Justice Parsons, of that state, declared against it. In New York, on the other hand, the legality of such marriages was upheld in 1809 by so distinguished an authority as Chancellor Kent (at that time Chief Justice) and common law marriages are still recognized in the state today. Those who take a narrowly legalistic view of these contrasting developments might claim that had Kent been a Massachusetts judge and had Chief Justice Parsons been presiding over the Supreme Court of New York the situation as regards common law

[1] A common law marriage is a marriage not solemnized in any particular form but based on a mutual agreement, between persons legally capable of making a marriage contract, to enter into the relation of husband and wife. The state is given no part in this arrangement, has no record of it, and no opportunity beforehand to pass upon the qualifications of the parties to it.

marriage in the 2 states would have been reversed. Massachusetts in that case would have regarded a common law marriage as legal after 1810, the date of the Parsons decision to the opposite effect, and New York would have established a ruling that "when our ancestors left England, and ever since . . . a lawful marriage there must be celebrated before a clergyman in orders"; and hence the same must hold true in New York. But what actually happened? The Kent decision of 1809 was made at a time when there was no marriage statute and had been none since 1691 in New York State, and the decision continued to hold because there was in that state no unified sentiment against marriage by consent only, which a more homogeneous population might have provided, and, therefore, no law was adopted to forbid common law marriages. This lack of public sentiment was shown by the state's reaction to the marriage statute adopted in 1827.[1] That law placed upon the officiants of marriage, upon many different magistrates and upon the clergy of many different denominations, responsibility for gathering the facts about candidates for marriage and the further responsibility of deciding who were qualified under the law and who were not. Upon these officiants devolved also the duty

[1] New York Revised Statutes, 1827–1828, Vol. 2, pp. 138 ff.
A committee appointed to revise and codify the laws of New York State recommended comprehensive provisions on the subject of marriage. These, with modifications, were adopted by the legislature and went into effect January 1, 1830.

of keeping a permanent record "in a book." "These regulations," says Kent in his Commentaries, "were found to be so inconvenient, that they had scarcely gone into operation when the legal efficacy of them was destroyed and the loose doctrine of the common law restored by the statute of 20th April, 1830, declaring that the solemnization of marriage need not be in the manner above prescribed, and that all lawful marriages contracted in the manner in use before the Revised Statutes should be as valid as if the article containing those regulations had not been passed."[1] Such was public opinion in New York early in the nineteenth century. But in Massachusetts, while beyond question there were some irregular alliances, unions without due sanction were not countenanced by public opinion, and naturally in these communities of one racial strain and tradition public opinion was all-powerful.

Our topic, Marriage and the State, does not properly include under marriage a form of it that ignores the state altogether. On the frontier there were conditions constituting some justification for alliances by consent only. In Alabama, for example, "Upon the Tombigbee and Lake Tensaw, the people still [in 1800] lived without laws, and without the right of matrimony. For years, the sexes had been in the habit of pairing off and living together, with the mutual promise of regular marriage when min-

[1] Kent, James: Commentaries on American Law. O. Halsted, New York, 1832, Second Edition, Vol. 2, p. 88.

isters or magistrates should make their appearance in the country."[1]

When throughout all the colonies a long and perilous expedition into uninhabited territory might have to be undertaken at a moment's notice, then the absence of ministers of religion and of any representative of civil authority might well constitute a valid excuse for common law marriage. No similar conditions exist today. Marriages by consent only, recognized formerly in England by common law, were forbidden, as just stated, as early as 1753. There could be no better illustration of the way in which customs persist after their transplanting and after the excuse for them has long ceased to be valid than is found in the fact that in 24 of our states common law marriages are still tolerated. They are unlicensed, unrecorded, and uncounted, but recognized as legal. With the multiplication of modes of travel and of other forms of intercommunication, with the increasing need of an accurate and complete recording of social data, with social welfare deeply involved in this question of the standards of marriage, these 24 states still leave to the courts the decision as to whether a given pair who have dispensed with the ceremony are married or not. Not only do the decisions of no two of these states agree, but courts in the same state are at variance and certain in-

[1] Pickett, Albert James: History of Alabama. Republished by Robert C. Randolph of Sheffield, Ala., 1896, p. 464.

dividual courts have handed down contradictory decisions. Hence there is little protection provided today for the woman who believes she is a wife by common law; there is now nothing better than a trap in this belated survival of early English law.

Outside of New England most of the older colonies showed their loyalty to the English establishment and to the individuals and private companies holding English charters by adopting or striving to adopt most of the English marriage customs of that day. Thus, in the Southern states, the license system of the present day is an adaptation of the centralized or governor's license, which was in turn an adaptation of the Bishop's license. In colonial times the governor's license, like the bishop's license in England, released candidates from publication of their banns in church. This procedure, of substituting a governor's license for the banns, which was a characteristic one in the Southern and Middle Atlantic states among the well-to-do, was adopted later in Northwest Territory. It became the system throughout a large part of the country and prepared the way for our modern marriage license. Even in colonies settled originally by the Spanish or French there is little trace of any continental influence in the marriage laws that were adopted later.

Loyalty to England led Virginia in the seventeenth century to enact a series of laws regulating marriage,

some of them unenforceable. In 1632, for instance, it was decreed that marriage ceremonies must be performed in a church; but with every desire to observe the traditions of one's forebears, there can be no church marriage where there is no church. As these lines are being written, news comes of Lieutenant Maughan's trip by airplane from New York to San Francisco "between dawn and dark" of the same day, but distance was distance on the frontier. Philip Alexander Bruce declares that in 1632 the church was in some Virginia parishes a two days' journey away. The absence of ministers of religion led the colony to resort for a while to local magistrates, "but this resulted in so much confusion that a law was passed confining the right to clergymen."[1]

Some of the difficulties encountered in days when there was not only an absence of churches and ministers but of courts and of legal instruments are illustrated by Alabama history. Thomas Jefferson named the first governor of the territory of which Alabama was a part in 1801, and this governor appointed justices for the counties. They came from different states, and William Garrott Brown records that each justice tried to apply in his new office the laws of the particular state from which he came.[2]

[1] Bruce, Philip Alexander: Social Life of Virginia in the Seventeenth Century. Privately printed, Richmond, Va., 1907, p. 234.

[2] Brown, William Garrott: A History of Alabama. University Publishing Co., New York and New Orleans, 1900, p. 93.

Here, too, as in many other parts of the United States, were apparent some of the disturbing effects upon marital standards of a group set apart in the community as racially and culturally different, and socially at a grave disadvantage. Negro women in the South, Mexican half-breeds in the Southwest, Indian women wherever they continued to live on the pioneer border, contributed by their presence—all unwittingly and helplessly—to the perpetuation of a false, double standard of sex morality and to a lowered sense of family and civic responsibility.

Wisconsin is one of the several states settled originally by the French in which we find little trace of their influence in later territorial or state laws relating to marriage. An eccentric Frenchman, however, Charles Reaume, was the first justice of the peace under the Americans in that section of the country. He continued, "through all these years of struggle and change," says Thwaites, "drafting antenuptial agreements, marrying and divorcing, registering births and deaths, certifying indifferently to either American or British commissions, drawing up contracts for traders' clerks and *engagés*, issuing baptismal certificates, and what not, either in wretched French or in abominable English as the case might be—general scribe and notary for the whole country round."[1] This diversity of functions and of authorities foreshadows the varied and mis-

[1] Thwaites, Reuben G.: The Story of Wisconsin. Lothrop Publishing Co., Boston, 1899, p. 150.

cellaneous character of the modern license issuer's task.[1]

Harriet Martineau visited Wisconsin in 1834. Milwaukee was at that time a town of 400 souls, and only 7 of these were women. The first newspaper printed there appeared a little while after this visit, and Miss Martineau found in this sheet a pathetic appeal to the ladies of more thickly settled districts, "imploring them to cast a favorable eye on Milwaukee and its hundreds of bachelors."[2] Even more than the absence of schools, or of opportunities for further schooling, this great preponderance of men along the border would account for the marriages of girls who were still children. Moreover, "wilderness rigors and lack of suitable employment in the settled regions," writes Calhoun, "impelled woman to marry, irrespective of love, as alternative to a rather impersonal and perhaps menial existence in the home of parent or other relative."[3]

We have said that on the later frontier there were many sudden changes of economic status. The classic example of this is California, though developments of a still later date in Oklahoma present many of the same changes and same consequences. It happens that the story of California's rapid growth is more completely on record than

[1] Chapter III, The License Issuer, p. 76.

[2] Martineau, Harriet: Society in America. Saunders and Otley, London, 1839, Vol. 2, p. 5.

[3] Calhoun, Arthur W.: A Social History of the American Family. The Arthur H. Clark Co., Cleveland, 1918, Vol. 2, pp. 11–12.

that of any other state, and that we have in addition, for the momentous decade in her history of 1846–1856, a genuinely social interpretation of events from the hand of Josiah Royce.[1]

When gold was discovered at Sutter's mill in 1848 and the great gold rush followed a year later, there had been 3 years of emancipation from Mexican rule without the substitution of any new governmental machinery. This, it will be remembered, was while Congress was wrangling over the free soil issue.

Following only 2 years after the discovery of gold, a total population of 14,000 (exclusive of Indians) had increased to 92,500, and 10 years later it was nearly 380,000. Many of the new settlers were of a different type from those of the earlier frontier. Men went into the gold fields leaving their responsibilities behind them and expecting to go back soon with fortunes made; and in the mining camps they were "utterly restless and disconnected men. . . When a countryside was full of such groups, disorder, before many months could pass, was simply inevitable."[2]

In the cities and towns conditions were even worse. Neither life nor property was safe. The drinking bars and gambling houses were crowded. "The feverish life of the times," Stewart Edward White writes of San Francisco, "reflected itself

[1] Royce, Josiah: California, A Study of American Character. American Commonwealths Series. Houghton Mifflin and Co., Boston, 1886.

[2] *Ibid.*, p. 300.

domestically. No live red blooded man could be expected to spend his evenings reading a book quietly at home while all the magnificent, splendid, seething life of down-town was roaring in his ears. All his friends would be out; all the news of the day passed around; all the excitements of the evening offered themselves. It was too much to expect of human nature. The consequence was that a great many young wives were left alone, with the ultimate result of numerous separations and divorces. The moral nucleus of really respectable society—and there was a noticeable one even at that time—was overshadowed and swamped for the moment. Such a social life as this sounds decidedly immoral but it was really unmoral, with the bright, eager, attractive unmorality of the vigorous child. In fact, in that society, as someone has expressed it, everything was condoned except meanness."[1]

The city made a splendid recovery. There are few more stirring pages in our history than those that describe the civic uprising in San Francisco and the Vigilance Committee triumphs of 1856. In reviewing the preceding 10 years Royce declares, "Everything that has since happened in California or that ever will happen there, so long as men dwell in the land, must be deeply affected by the forces of local life and society that then took their origin."[2]

[1] White, Stewart Edward: The Forty-Niners, A Chronicle of the California Trail and El Dorado. Yale University Press, New Haven, 1918, p. 168.

[2] Royce, *op. cit.*, p. 1.

It would be easy to exaggerate the effect of these peculiar frontier conditions upon California's marriage laws and upon their administration, but indubitably the effect is there, not only in the unusually careful provisions against fraudulent marriages that we find in her earlier laws, and in their attempt to make any form of cohabitation a legal marriage,[1] but also in the degree of interest shown throughout the state of late years in both divorce reform and marriage law reform. Just as overcrowded New York was the first city in the country to have a housing exhibit and to make a concerted attempt to reform her tenement house laws, so one of the earliest reports on marriage reform was issued in California; that state was the first to ask by resolution of its legislature for a federal divorce law; and some of the strongest propaganda in favor of the federal regulation of marriage and divorce has come from there.[2] At present her statutory regulations with regard to marriage deserve to be classed with the stronger state laws, though the California divorce and marriage annulment rate seems still to be considerably above the average for the country as a whole.[3]

The experience of Oklahoma re-enforces the con-

[1] California Code of 1871, Secs. 55, 56, 75, 76. Code of 1872, Secs. 76, 78.

[2] Hearings before the Committee on the Judiciary, House of Representatives, on House Joint Resolution 187, October 2, 1918, p. 98 and elsewhere.

[3] Marriage and Divorce, 1926. U. S. Bureau of the Census, Washington, 1928, pp. 20 and 66.

clusion that may be drawn from earlier days in California; namely, that wherever economic values are wholly abnormal, matrimonial values soon become so. Oklahoma had an industrial boom after oil was "struck" about 1904. The population of one typical oil town in Oklahoma increased over thirty-five times in less than ten years; early in the 1920's competent observers reported a laxness there among all classes of society which formerly we were accustomed to regard as confined to a limited class in metropolitan cities. Among the wage-earners of the town, for example, there was the utmost casualness in the marital relation. The divorce courts were kept busy. These were still quasi-frontier conditions, but conditions that were in striking contrast with those of the earlier frontier.

The United States has today in its 48 political divisions 48 separate social laboratories in which can be worked out a product socially valuable to the whole country. It may be doubted whether, in the marriage field at least, this can be done without due regard in each of these laboratories to the social origins of the materials with which the legislator and the administrator must deal. The great diversity of these origins has been only faintly suggested in the preceding paragraphs, but despite the modern cultural developments that tend to draw them nearer together, we know that the fruits of that earlier planting are still diverse today.

PART I

WHAT HAPPENS IN LICENSE OFFICES

CHAPTER II

THE LICENSE SYSTEM OF TODAY

OUR present marriage license system—not its theory but its actual working out in daily practice—is the main theme of this book. It may be well at this point, however, to indicate what that system is in bare outline, without even mentioning many of the minor variations in different states.[1]

Universal adoption of the licensing system by our states came slowly. As late as 1887, 11 states had not yet adopted licensing, and publication of the banns is still a legal substitute for the marriage license in 3 states. Save for this minor exception, however, all states now require a license, though it is well to remember that legal regulation of some sort long antedated our present marriage license system.

No one now is authorized by the state to enter matrimony and no one (with an alternative provided in only 3 states) can perform the marriage ceremony legally unless a state license has been granted to the 2 candidates. But unlicensed marriages, though forbidden, are not invalid for that

[1] A table of these variations, in so far as they affect administration, will be found in Appendix B, Table 3, p. 370.

reason unless the state law specifically declares them to be so; and a marriage act proposed by the Commissioners on Uniform State Laws,[1] but adopted as yet in 2 states only, would make the license an essential of every valid marriage. The strength of any license system, however, rests not so much upon the provision that requires candidates to obtain licenses as upon the one that penalizes those who officiate at marriages without requiring candidates to present licenses in satisfactory form.

As a rule a marriage license is granted, if granted at all, as soon as it is applied for, and the affidavits of any 2 candidates (or more often the affidavit of only one of them) are treated as all-sufficient proof that both are qualified to receive the state's sanction. In 8 states, however, all candidates must now give advance notice of intention to marry unless a special order from a designated court of record waives this requirement in their cases.[2] This advance notice to the license issuer is followed by an interval of a few days before the license can be granted.[3]

I. THE USUAL PROCEDURE

By the procedure that is still the usual one, issuance of a marriage license involves an interval after application of not more than ten or fifteen

[1] Chapter IX, Evasive Out-of-State Marriages, p. 194.

[2] For a list of states having any form of advance notice, see Table 2, p. 110.

[3] The advantages of advance notice are described in Chapter V, Advance Notice of Intention to Marry, pp. 112–116.

minutes. Candidates must be single, widowed, or divorced; they must be above specified minimum ages that are almost without exception higher for boys than for girls; usually they must have procured, if below the age of majority, the consent of their parents to the marriage; and they must not be closely related to one another by kinship or intermarriage. It is also presumed by common law when not specified by statute that they must be able to understand the meaning of the marriage contract and must be physically able to consummate it. These qualifications, in so far as they are included in the marriage law, are sometimes printed on the application blank or on the marriage license itself.[1]

The male candidate is almost always the one who applies for the license. Though both candidates should be required by law to appear in person at the license office (or license offices where they reside in different license districts), only 7 states now demand application in person by both the prospective bride and bridegroom.[2] In most other states the bridegroom is the one who makes the application. This means that merely by swearing to the truth of the data that he himself has furnished, he establishes not only his own right to marry but also that of the bride. He is then told

[1] For suggested application forms and license forms that illustrate possible improvements in the present laws and procedures, see Appendix A, p. 355.

[2] For the names of these states, see Appendix B, Table 3, p. 370.

to sign the application blank or the record book, the license issuer or his deputy makes out the license, and the state has given its sanction for the founding of a new family. Some license issuers, as will appear in the next chapter, put into this brief procedure the largest possible care and thought permitted by custom and by law; even so the very best license office practice with which we are familiar is capable of improvement.

The issued license is addressed to anyone legally entitled to solemnize marriages, whether a civil or religious officiant. Usually it bears instructions to the officiant that the license itself, or a detachable part of it, must be signed after the ceremony by the one officiating and must be returned by him to the issuing office. Unless this is done, the state is not custodian of any permanent record of the fact that the ceremony has been performed—a lack that may prove awkward for the principals later on. Moreover, with every failure to make such a return the state's registration of marriages is rendered incomplete and misleading. Both civil and religious officiants are sometimes careless about making returns, while the present provisions for following up all licenses after issuance are inadequate.[1]

A fee, commonly of $1.00 or $2.00, is collected for the license. When candidates admit disqualifications specified in the law a license is refused.

[1] For a fuller discussion of the importance of procuring full returns, see Chapter XIV, Records and Penalties, pp. 295–302.

Sometimes when disqualifications are merely suspected issuance is refused or delayed, though the more usual procedure is indicated in the familiar expression, "I've *bought* my license." One issuer writes to us, "I find the sale of marriage licenses in this office as follows . . . ." The Delaware marriage law reads "Clerks of the Peace . . . . shall sell the marriage licenses for not more than $3.00 each." Two newspaper items state: "Another license was sold Monday morning, the young man buying it volunteering the information that he would have to steal the girl,"[1] and "The license official sold the pair a marriage license."[2] A newspaper headline reads, "Bridegroom, 78, buys third marriage permit."[3]

There is no effort to insure privacy to those applying for marriage licenses. Application is made across a counter in a room that may be partly filled with persons having other business there or with mere loafers. The offices themselves are usually in the county or city office building and are as dingy or as bright as that building happens to be.

Marriage license issuers have many other duties. This may be inferred from their varying official titles, such as clerk of court, county clerk, town clerk, city clerk, probate judge, county judge,

[1] Valdosa, Georgia, *Times*, February 21, 1922.
[2] Minneapolis, Minnesota, *News*, October 10, 1919.
[3] Salt Lake City, Utah, *Telegram*, January 18, 1922.

recorder, register of deeds, auditor. It is true that in large cities the task of marriage license issuance often occupies the whole time of several persons, but in towns and rural districts this is not the case.

In places both large and small the official charged with this duty performs it without supervision. His administrative procedures are standardized by nothing save a marriage law which is usually vague as regards administrative details and at many points must continue to be so. The only exception to the issuer's unsupervised service is found in a minimum of supervision supplied by certain state registrars of vital statistics who control the forms used and the type of record forwarded to the registrar. Probably the greatest single advance of all in the marriage license system of today will be made when every state has provided for detailed state supervision of all marriage license issuers and has developed among them an esprit de corps and a professional interest in their task that is now found only among a minority of issuers.[1]

[1] This subject of State Supervision is considered in Chapter XV, pp. 316–329.

CHAPTER III

THE LICENSE ISSUER

OUT of 96 marriage license districts visited for all purposes connected with our field investigation, we have selected 70 offices in 26 different states where we had access to records and saw enough of the work of the officials responsible for issuance to enable us to describe their methods in some detail. Analysis of their clerical service would have been simple, for records are either right or wrong. But, as the study proceeded, we became more and more convinced that the clerical half of an issuer's duties should be the smaller half, while it was apparent, on the other hand, that few issuers shared this belief. To make a statement under these circumstances that does full justice to the best service found without ignoring obvious defects—defects in the system, be it noted, more often than in the individual official—is a complicated and delicate task.

With the 1,081 typewritten pages before us in which these 70 offices are studied and recorded, an attempt will be made at this point to give our findings upon only two of the subjects covered: first, upon the type of discretion that the license issuer is now exercising under our marriage laws,

and second, upon his relation to the laws themselves. However imperfectly the marriage statutes are now interpreted and however haltingly discretion is now understood, it is more than probable that the best administration of which license issuers are found to be capable at present will indicate the direction progress should take in the near future. When the beginnings of reform are made "out of the blue" they have a way of ending there, but what actually has been done can be done again and done better.

I. THE DISCRETION EXERCISED BY ISSUERS

"Many laws passed by the lawgiving authority of the state," says Goodnow, "are of such character that they merely express the will of the state as a general rule of conduct. They do not, and, in the nature of things, cannot, express it in such detail that it can be executed without further governmental action, tending to bring a concrete individual or a concrete case within the class which the general rule of law purports to effect."[1] This "further governmental action" is the grave responsibility of the license issuer. His function can be not only ministerial but administrative.

Schouler, a leading authority on marriage and divorce laws, supports the following statement by reference to 11 court decisions in 4 different states:

[1] Goodnow, Frank J.: Politics and Administration. The Macmillan Co., New York, 1900, p. 74.

The duty of the person issuing the [marriage] license is not ministerial solely, but he may be charged with the duty of making reasonable inquiry as to the identity or capacity of the parties to marry or their right to a license, and the statute may provide a penalty recoverable for the issuing of a license improperly or without reasonable inquiry.[1]

While this statement is true, it is also true that the duties of marriage license issuers have seldom been defined by the courts and that their failure to exercise discretion is not often challenged. Though some issuers interviewed accepted the broader interpretation of their functions, as we shall have occasion to note, many others did not seem to realize that under existing laws they had any discretionary powers whatever. Such powers are implied in certain of the statutes and explicitly provided for in some others.[2] There is no doubt, however, that

[1] Schouler, James: Marriage, Divorce, Separation and Domestic Relations. Matthew Bender Co., Albany, 1921, Sixth Edition, Vol. 2, p. 1463.

[2] Many state laws now require that the issuer of the license shall be satisfied that no "impediment" to the marriage exists. If the word impediment must be interpreted narrowly to cover only those disqualifications that render a marriage absolutely void, the discretion thus granted has little value. But an examination of the judicial decisions bearing upon this question seems to make it clear that the term "impediment" is not confined to those conditions that render a marriage void. See the case of Bonker *v.* People, 37 Michigan 4, in which Judge Cooley refuses to accept this restricted use. The only decision we have found, however, which extends the term to include disqualifications that do not even render a marriage *voidable* is a recent Minnesota case (State *v.* Randall, 166 Minnesota 381). Here a man is prosecuted for committing perjury when he applied for a license in that he misrepresented both the age and the residence of the young woman named as his prospective bride. It is contended in his defense that "impediments," as used in the Minnesota marriage law, do not include nonage and lack of proper residence. The court holds, however, that the term cannot be restricted

many marriage laws should be more specific on this point.

Much of the discretion that the issuer should be expected to exercise relates to the qualifications of candidates for matrimony. Are they above the age below which no marriages are permitted? Are they above the maximum age for which parental consent to the marriage is required? Has either candidate been married before? If so, is the former husband or wife either dead or divorced? Where there is in the law a residential requirement for one candidate, is that one really a resident of the place in which a license is sought? What general disqualifications for marriage, if any—insanity, feeble-mindedness, or such communicable diseases as tuberculosis or a venereal infection—are involved in this particular case? Evidence on some of these matters is easily had, usually in documentary form and producible by the candidates, though the evidence with regard to disease is obtained with greater difficulty. Proof of age, as shown in a whole chapter

to such impediments named in the law, as a living spouse, blood relationship, epilepsy, imbecility, feeble-mindedness, or insanity. The opinion declares,

"Age and residence are on a par with the prohibited marriages. The age may prohibit the marriage. It may merely require the formal consent of others. If so, it is material for the truth to be known in reference thereto and that a record thereof be made. Anything is material when its presence or absence determines whether the clerk is subjected to a penalty. There are obvious and valid reasons why the legislature should require the license to be procured in the required county rather than in some remote and unknown county. . . . The natural and unconstrained construction of the statute leads to the conclusion that the legislature intended that under-age and lack of residence in the county are included in the phrase 'legal impediment.' "

devoted to that subject in our earlier book,[1] has been so well systematized in other forms of public administration that it should no longer be a problem in this one. Parents, if living, can be communicated with; if dead, their deaths are matters of record. If candidates claim to be single it is not so easy to prove the contrary, but at least an index of the marriage licenses already issued in the district can be consulted, and a candidate claiming to be divorced can be required to produce a record of the decree. For proof of residence, there are telephone books, city directories, and a variety of accessible forms of evidence. In lieu of all these the issuer leans heavily, more often than not, upon the weakest evidence possible; he accepts the affidavits of candidates as satisfactory proof. In other words the candidate declares whether he is qualified or not, and no discretion is exercised.

Though an estimate of the quantity and quality of discretion used by issuers in the license offices studied defies tabular presentation, the topic is here condensed into as small a compass as possible under 10 subheadings:

(1) *Both Candidates Required to Appear.* Certain states do not require that applicants for a license appear in person. In a few of the 70 offices included, we found that the silence of the law upon this point had been interpreted to mean that neither candidate need appear. Licenses were sometimes

[1] Child Marriages, p. 117.

issued in response to applications by mail, with no greater care exercised than to require that the application be sworn to before any notary. This was found to be the practice in an office in the state of Oregon and of another in Oklahoma, as well as of 2 offices in Vermont. In only 7 states, as already noted, is the appearance by both candidates required by law. But it is encouraging to note (though this item was not always covered) that 21 out of 38 license offices where the state law was silent on the subject were found to make a practice of requiring the appearance of both candidates. The advantage of this procedure and its bearing upon the important question of age are apparent. Where both candidates, moreover, have the provisions of the law explained to them by the issuer, neither one can so easily become a victim of deception. The wider observance of this single precaution would make for a reduction in the total number of applications for annulments and divorces.

(2) *Verification of the Statements of Candidates in Certain Cases.*[1] With the more general adoption of the advance notice of intention law soon to be described[2] it should become easier for an issuer to make a wise decision in a doubtful case by requiring candidates to supply further verification of their claims. As a matter of fact the few instances of such verification that we noted in the course of

[1] These statements are in addition to those considered in paragraphs (3), (4), and (5).

[2] See Chapter V, Advance Notice of Intention to Marry.

our visits were all in states having an advance notice law.

(3) *Proof of Age of Minors and Proof of Parental Consent Required in Doubtful Cases.* Many of the issuers interviewed still take the view that the oath of the applicant as to his or her age, even though that applicant be a mere child, relieves them of all responsibility in the matter. One issuer writes, "Our worst trouble is the age or lack of age of applicants. So many of them swear falsely to their age, and we are powerless to do otherwise than to give them a license." As a matter of fact in no state of the Union is a license issuer really powerless in this matter, and in 13 offices out of a possible 60 we found the ages of young people challenged in doubtful cases.[1] Proof of parental consent is also necessary because so many letters, purporting to have been written by parents, are forgeries. Careful issuers now require parents either to appear in person or to file a sworn and witnessed statement of their consent.

(4) *Proof of Residence Required.* Unfortunately this subject of proof of residence was not adequately covered in the earlier part of our field work. In 7 of the 24 states, however, that had a residential requirement then, the license issuers of 14 different places gave us specific statements about their pro-

[1] For further discussion of proof of age, see Chapter VI, Youthful and Child Marriages, pp. 141–146, and a chapter on that subject in our book on Child Marriages.

cedure with regard to this point. In each of the 14 the law was either openly violated or there was failure to demand any proof of the claims of candidates as to residence. Such proof is often available in directories and telephone books, and these documentary sources can be supplemented by competent witnesses.

(5) *Proof of Alleged Divorces Required in Some Cases.* In contrast to the foregoing (though this point was not covered in more than half of our visits) we noted that 14 offices in the states where no such evidence was required were seeking proof, in some of their cases at least, of alleged divorces, and that certain of these offices were asking for proof in all such cases.

It must be recognized, of course, that candidates can declare themselves to be single instead of divorced or married, but under suspicious circumstances their assertions should be accepted with caution. In a New England town recently a Russian applicant declared to the license issuer that he was single. The issuer had no knowledge to the contrary, though he knew that the candidate had had irregular relations with a certain woman. The entire affidavit was read to this Russian with particular stress on the statement as to any previous marriage. The man's application was then filed in accordance with the state's five-day advance notice law. But before the 5 days had expired and the license had been issued the license official happened to hear

that this candidate for matrimony had a wife living in Russia. Interviews with some of the man's friends confirmed the rumor, and the candidate was himself at last brought to admit it.

A man in Los Angeles, arrested on another criminal charge, was discovered in the course of his examination to have been married seven times. His first marriage had been solemnized 27 years before his arrest, but a search of public records showed that he had been married under an assumed name in Warren, Ohio, March, 1919; in Tacoma, Washington, September, 1919; in Fort Wayne, Indiana, April, 1920; and in Des Moines, Iowa, October, 1923. At last accounts, Spokane, Washington, officials were about to start proceedings to extradite him for a similar marriage there. Thus, at least 5 women and possibly more might have been protected from this fellow if the habit were once firmly established by law and by license office practice of demanding proof of the residential and other claims of candidates instead of accepting their sworn statements as all sufficient.[1]

California had in 1920 a so-called Bluebeard who admitted that he had married 21 wives and had murdered at least 9 of them inside of 3 years. Four of these women were married in the one city of Tacoma, and he had lived there with all 4 at or

[1] See also in this connection Chapter VIII, Clandestine Marriages, pp. 178–180, and a description of the double license plan in Chapter IX, Evasive Out-of-State Marriages, p. 208.

about the same time.[1] What shall we say of the type of public administration that places the state and its citizens at the mercy either of criminals such as this one, or of mere adventurers and sensation seekers whose oaths are worthless? It is true that imposture cannot be made impossible, but why make it so easy?

(6) *Incompetent Witnesses Challenged When the Law Requires Witnesses.* In 13 states, witnesses to the license application are called for or are specifically allowed in the law. This is chiefly for the purpose of furnishing more trustworthy evidence with regard to the competence of candidates to marry than can be expected from the interested principals. In none of these states is the license official obliged to accept the witnesses supplied by candidates themselves, and in some laws it is specified that the witnesses shall be "competent" or "disinterested." The opportunity thus afforded to the license official has been little used. Usually license issuers seem to feel obliged to accept any persons as witnesses who are willing to swear to the necessary facts, even though there is good reason to suspect that "professional witnesses" are being provided. A professional witness is one who makes a business of offering to serve for pay as witness to things of which he has little or, more often, no knowledge. A deputy license issuer in Seattle, Washington,

[1] *Journal of the American Institute of Criminal Law and Criminology*, Vol. 12, November, 1921, pp. 348 ff.

confirms his newspaper interview on this subject, from which we quote in part as follows:

I have no doubt that many licenses are being obtained under false pretenses. Under the law, the couple to be married may bring in a bellboy or a for hire car driver and have him swear to the affidavit, first making themselves acquainted by a brief introduction. Such witnesses, having only become acquainted with the couple, can swear that they know of no impediment to the marriage. This is perjury in spirit if not in fact, but the perjury of the law is founded on facts. Because it can be easily done and because of the character of many persons who obtain licenses, I believe that it is being done. The pocketbook of the bridegroom is the only controlling factor.

The law is based on an affidavit signed by each party and by one witness after which the license is issued. Yet in only about one out of twenty-five cases do the parties read this affidavit. They sign on the dotted line, and don't know what they're signing, only that they are going to receive a license to wed.[1]

This issuer expressed the intention of requiring thereafter all signers of affidavits to read what they are testifying to under oath, and said he approved of an advance notice of intention requirement which would do away with these abuses and "prevent hasty marriages, the fruits of which are our crowded divorce courts."

Another deputy license issuer in the same state has learned to identify witnesses who reappear at her office often. She states:

A man used to appear so frequently as a witness that the office spoke of him as a professional witness. He could not know

[1] Seattle, Washington, *Star*, April 7, 1923.

people from distant places, though he took oath for them. But the license office could not prove that he did not know these people, so he was not refused as a witness. The office reported him to the sheriff, however, and had him watched. He was probably warned, for he ceased to operate.

A New Jersey issuer keeps a list of witnesses and refuses to accept the testimony of one shown by the list to have served recently for a different candidate. Another New Jersey issuer refuses a license when people apply from out of town without a witness. When they are told that they must bring a witness only to reappear a few minutes later supplied with one, he refuses them again. In a North Carolina case in which the issuer had accepted the evidence of a taxicab driver as to the age of a girl candidate, her father brought suit against the issuer and a court decided that he had granted the license on insufficient evidence; that the witness should have been someone "known to him as credible."

Finally, in 3 other cases that have come to our attention in 3 different states, the requirement by law of a witness or of witnesses, if intelligently administered, would have been useful as a means of identification, for in all 3 cases women dressed as men obtained licenses to marry other women.

(7) *Cases of Mental Defect or Disease and of Certain Communicable Diseases Noted and Licenses Refused.* Some state laws specify that no marriage licenses shall be issued to persons who are imbeciles,

others forbid marriage license issuance to the insane, the feeble-minded, and the epileptic, while still others, though only a few, stipulate that persons with specified diseases—chiefly the venereal infections and tuberculosis—shall not marry.[1] In addition to these restrictions, a few states disqualify habitual drunkards, those intoxicated at the time that they apply, and those who are under the influence of a narcotic drug.

The difficulty of effecting any control of mental defect or transmissible disease by means of marriage laws is very great. This fact is illustrated in a separate publication by one of the present writers which describes medical certification for marriage as a protection against venereal diseases.[2] Though it is even more difficult to enforce the marriage provisions that relate to insanity and feeble-mindedness, yet some laws on that subject seem to assume that it is very easy, and certain of the office forms based on these provisions actually require a candidate to make affidavit that he or she is not insane or feeble-minded. The affidavit form shown on the following page is an example. It is not surprising to find that measures administered after the fashion which this form represents are no effective bar to the marriage of feeble-minded children with a mental age of 6 years.

[1] See Appendix B, Table 3, p. 370, where the states which have some of these laws are listed.

[2] Medical Certification for Marriage.

AFFIDAVIT OF APPLICANT FOR MARRIAGE LICENSE

State of Washington, } ss. MALE
County of King. }

I, ..., being first duly sworn, depose as follows: That I am the MALE applicant for the issuance of a marriage license by the county Auditor of King County, State of Washington. I am not feeble-minded, imbecile, epileptic, insane, a common drunkard, and am not afflicted with pulmonary tuberculosis in its advanced stages, nor with contagious venereal disease.

Signature.....Address.....

Subscribed and sworn to before me this.....day of....., 191.....

.....
Deputy Auditor, King County, Washington.

In a Minnesota case, we found that the very court commissioner who had adjudged a girl feeble-minded had also a year later officiated at her marriage. She was still under 16 at the time.

Years may elapse before protection is assured the public in anything like 100 per cent of these cases. But issuers who are in earnest are not en-

tirely helpless even now; they will be less so when they find public opinion behind them. We propose at this point, therefore, to stress the gains in vigilance that we have been able to note in the course of our field visits.

We were pleased, for example, to find that 13 of the license offices visited in states having laws on the subject had recognized cases of mental defect and disease and that marriage licenses had been refused on that ground alone. In a Kansas office a young man had sworn before the deputy issuer that he and his prospective bride were "legally competent" to marry. But when the license issuer himself was summoned to sign the license, he recognized the young woman candidate as a former inmate of an institution for the feeble-minded and refused to issue the license. Minnesota license issuers are supplied by other public officials with lists of all persons in their several counties who have been adjudged feeble-minded, whether committed to state institutions or not, and this method of notification could easily be extended to the insane. It would then become merely a question of good office method to assure official challenge of any whose names appear on these lists. One Minnesota issuer, however, is known to have excused himself in a flagrant case of license issuance to a feeble-minded woman whose name was on one of the lists, by maintaining that the law did not require him to consult such lists before issuing a license.

In states having no law or a very incomplete law about the marriage of the feeble-minded we have found that some issuers are taking a courageous stand and are even exposing themselves to the risk of mandamus proceedings by refusing to grant the sanction of the state to marriages that seem to them a menace to social welfare. In Massachusetts, with no law applying to mental defect above the grade of idiocy, some issuers are refusing licenses to the feeble-minded of higher grades. In California, with a law equally limited, 2 of the license issuers seen were found to be doing the same.

It should be made more widely known that, on the ground of serious mental or physical defect, license issuers can sometimes find authority for refusing issuance in the rule of common law which stipulates that anyone making a legal contract must be capable of entering into it. An idiot is incapable beyond question, and on this ground alone the refusal of the license issuer, if challenged, would be sustained in court. The laws of a middle western state that are silent about the marriage of the mentally defective provide that no license shall be issued to a person "disqualified from making any other contract." By a liberal interpretation of this law, one license issuer refused a marriage license to a girl who obtained one later, however, in another county. In 3 weeks' time the marriage was annulled and the bride committed to an institution for the

feeble-minded. An issuer in Colorado refused to grant marriage licenses to 2 women both of whom applied within a short interval in order to marry a wealthy Osage Indian who was a pellagra patient and critically ill. Their applications were refused on this common law ground that the man was physically as well as mentally incompetent to enter into a contract. In the opinion of the issuer both women were seeking the Indian's money. As a matter of fact, he died only a week after the last application.

It should be possible on this same basis of incompetency to refuse licenses to persons when they are intoxicated or under the influence of drugs. Schouler, however, puts the case very conservatively:

> Upon the principle of temporary insanity, drunkenness incapacitates [for marriage], if carried to the excess of *delirium tremens:* though not, it would appear, if the party intoxicated retains sufficient reason to know what he is doing. Drunkenness was formerly held a bad plea [for annulment]; for the common law permitted no one to stultify himself; but the modern rule is more reasonable. Some cases require that fraud or unfair advantage should be shown; yet the better opinion is that even this is unnecessary.[1]

(8) *Refusal of Licenses Reported to Neighboring License Issuers, with the Reasons Therefor.* When candidates are refused a license on good and sufficient grounds in one office frequently they try at another in a neighboring city or county. To make

[1] Schoulder, *op. cit.*, Vol. 2, p. 1373.

this form of evasion difficult, the license official in Los Angeles, California, sent the following letter to fellow officials in nearby counties:

It is occasionally called to my attention that after an unsuccessful effort to obtain a marriage license in this county because the parties, one or both, by their own admissions or otherwise, are found or believed to be of insufficient legal age that they later go to another county and by making a false affidavit obtain the desired license. It may be that the situation is sometimes reversed, the failure in another county later being followed by the issuance of a license in this county.

I feel that you will agree with me that while the affidavit of the parties is a legal protection to the county clerk in the issuance of the license, yet there is a moral duty to refuse a license in those cases where the county clerk is convinced that perjury in regard to the age of the parties is being committed. It is easy to be seen that if the same sense of duty to the public does not alike govern in all counties perhaps the only obstacle in the way of minors illegally obtaining a license is a pleasant ride, frequently in the nature of a lark, from one county seat to another.

It has been suggested to me that the county clerks might find it possible to co-operate to stop such practice by prompt notice given to each other of those cases where license has been refused, stating the reasons, such notice being considered as not conclusive, but merely advisory.

I would be pleased to know what you think of the suggestion. If you agree with me that our co-operation in this matter will serve the best public interests the necessary details can be later worked out.

With one exception, all of the issuers thus addressed expressed themselves as in sympathy with the suggestion and promised their co-operation in carrying it out.

(9) *Officiants at Marriages Are Followed Up for Failure to Report Ceremonies.* Responsibility is explicitly placed by law in only a very few states upon license officials to see that civil officiants and religious celebrants return marriage certificates to the license office, thus completing the permanent record that the office is supposed to keep. In the absence of some such instruction, many issuers do no more than file the certificates if they happen to be returned. We found, however, that, out of 41 offices visited in which this item was covered, 23 had developed a system of follow-up. When the name of the intended officiant was not known and no report had come in from him later, the routine was adopted of addressing a card to the male candidate with the request that he notify the office as to who performed the ceremony, when and where. Usually people are incensed when they find that officiants have failed to report their marriages and will make some protest. This has a tendency to increase the care with which such officiants report ceremonies thereafter. The social consequences of failing to follow up unreturned marriage licenses are serious. Some foreign women, for example, coming from countries where civil ceremonies are compulsory and confusing the act of license issuance with the ceremony, are easily deceived into thinking that they are married when they are not.

Failure to follow up the license has serious consequences also when persons legally married find

themselves unable to obtain a record of the marriage upon application for it some time later.[1]

(10) *Licenses Issued Out of Hours in Real Emergencies Only.* In contrast with the license issuer who warned his deputy that licenses must be issued at any hour of the day or night at which issuance was requested, we found that, out of a possible 57, 13 of the offices visited were limiting issuance to office hours except in real emergencies. Such emergencies include, for example, cases of the dangerous illness of one of the candidates or of their parents or other near relatives; cases in which two persons have lived as man and wife without marriage and wish to avoid publicity for a belated ceremony; occasional cases in which bridegrooms have come from a distance to a seaport to meet fiancées arriving from Europe; cases arising in large counties with inadequate railroad facilities, where candidates from distant parts of the county might be seriously inconvenienced by delay; cases where arrival has been long delayed by a blizzard or railroad accident; or cases in which a flaw in the license already issued has been discovered just before the wedding is to take place. We shall see, in a later chapter,[2] what damage can be done by out-of-hour issuance in cases in which no real emergency exists.

It should be apparent from the foregoing 10

[1] For illustrations of these two difficulties and of others mentioned here, see Chapter XIV, Records and Penalties, pp. 295–302.

[2] Chapter VII, Hasty Marriages, pp. 151,162–164.

subdivisions illustrating the forms of discretion now possible to the official who issues marriage licenses that he holds a position which, so far from being one of routine duties chiefly clerical, could actually be strategic in its relation to better marriage law administration in the United States. He can and, in a minority of cases at least, he does make inefficient laws less inefficient, and in many cases he can and does render relatively good laws of no avail.

II. THE ISSUER AND THE LAW

The license issuer's relation to the marriage statute itself, as distinguished from his other administrative functions, may be considered under the captions of his familiarity with the law, his observance of its provisions, his vigilance in furthering prosecutions for its violation, and his explanation of the law's provisions to candidates.

(1) *Familiarity with the Present Marriage Law of the State.* We found only 2 license offices in which there was ignorance of the law in its main outlines, and one of these was in a marriage market town. Usually, however, the offices in towns that are Gretna Greens and make a business of issuing licenses to runaway and out-of-town couples are very careful to keep within the strict letter of the law, fearing prosecution, perhaps, by irate parents.

In 22 of the 70 offices there was ignorance of some one or more of the provisions of the law, often of

one of its supplementary provisions. The following are a few examples:

Three of the 5 license issuers interviewed in Wisconsin did not know that the law of their state provided that a woman who has had a venereal disease must file a certificate indicating that she is free from infection.

One issuer in the same state had never heard of the marriage evasion act.[1] Another did not know that common law marriages had not been recognized in his state since 1917.

An issuer in New York State was in error in maintaining that marriages were not forbidden in that state between persons of specified degrees of consanguinity. It should be added, however, that the state form of application blank in use at the time omitted all reference to consanguinity; each candidate was merely required to swear that "no legal impediment" to the marriage existed.

An Alabama license issuer assured us that the section of the marriage law requiring candidates to give bond for $200 that there is no lawful cause why the marriage should not be celebrated was repealed in 1909. As no repealing act could be found, we wrote to the Alabama Secretary of State, who assured us that there had been no such repeal.

In Indiana we found 2 issuers ignorant of the residential requirements of the marriage law.

The greatest confusion that our visits and later inquiries by correspondence brought to light was in the matter of the marriageable age. Owing to many conflicting statements, a form letter was addressed to several license issuers in each of the 48 states and the District of Columbia asking what the lowest

[1] The evasion act recommended by the Commissioners on Uniform State Laws in 1912 and adopted in 2 states, of which Wisconsin is one, provides in effect that if a marriage contracted by a resident of a given state is of a kind declared by that state to be void, it is void there even if contracted outside its borders. For a discussion of this act, see Chapter IX, Evasive Out-of-State Marriages, pp. 192–197.

marriageable ages were in their state for males and for females when parental consent had been given. We received replies from issuers in 89 cities and 47 states. Of this number 60 were correctly informed, while 29 were either unaware that there was any minimum age for license issuance or else gave us incorrect ages.[1]

In none of the states, as already indicated, is any central authority charged with the duty of supervising the local marriage license offices or of keeping them informed of the law's details and of the best methods of enforcement. This fact excuses, to some extent at least, the instances of ignorance of the law just cited.

(2) *Observance of the Law's Provisions.* In 47 of the 70 license offices selected the marriage law was not only known but was being carefully observed. In 23 offices we found that the law was violated in some one or more particulars; though analysis shows that what must be counted in strictness as a violation of the law's provisions, and has been so counted, was often a violation of some minor detail. These minor variations from legal requirement were often due to an issuer's desire to carry out what he conceived to be the intent of the law and to his desire to adapt it to somewhat exceptional circumstances. Certain other violations, however, seemed to be due either to sheer carelessness, to wilfulness, or to a desire to serve some selfish interest. Departures from the intent of the law that cannot be classified

[1] For a discussion of the minimum marriageable age, see Chapter VI, Youthful and Child Marriages, pp. 128–134. See also our book on Child Marriages, pp. 45–54.

as discretionary included most frequently an ignoring of its residence qualifications in order to accommodate non-resident candidates. New York State requires that a woman must obtain her license in the town or city of her residence if she lives within the state. In 3 out of 5 cities visited in that state we found this provision ignored. In one of them, a non-resident had been allowed by the license issuer to give as her residence the hotel in which she had spent a night or two. We found open violations of the residence requirement in 3 other states—Alabama, West Virginia and Indiana—and in 2 of these states the law was ignored in more than one of the places that we visited.

Another illegal practice noted which cannot have been wholly disinterested is that of signing licenses in blank and of handing them to candidates to be filled out later either by themselves or by the officiant at the marriage. This irregular procedure is noted in 3 states—Maine, Alabama, and North Carolina. Closely allied to it is a practice discovered in some New Jersey offices of dating licenses falsely to evade the state law that requires a two-day interval between the application for the license and its issuance.

The intent of the parental consent law is often ignored, or it is so carelessly enforced as to be evaded with ease. Thus, in Maryland we found an issuer accepting telephone messages in lieu of the required written consent of parents attested by 2 witnesses. In New York State the requirement that both parents

of candidates of parental consent age must appear in person before the issuer "unless physically unable to do so," was being ignored in 3 of the 5 license offices visited. Violations of the parental consent requirement were also noted in Oklahoma and West Virginia.

Probably because they are enforced with difficulty, laws prohibiting the marriage of the venereally infected, of the insane and of the feeble-minded were ignored by some offices in Indiana, New Jersey, Virginia, California, and Wisconsin. The following reply to a letter addressed to a license issuer in the Southwest illustrates the attitude of mind of one type of issuer—not the very worst type, for the worst of all are shrewder, but certainly far from the best:

In reply to above will say that I am afraid you have been misled by some newspaper clipping in the Case you refer to;

To begin at the beginning I will say, that the woman you refer to in company with her Uncle and Aunt, also the man she Married, came to the office of the Circuit Clerk and Recorders' Office for a Marriage License the man the woman was to be married to was, an acquaintence of Clerk and Recorder; the Uncle and Aunt made affidavit that they were her legal representatives and in complete charge of her, as her Father was dead and her Mother was a charge of the County in which they live, that was . . . County, in [this state], and that she was 17 years of age,[1] and which I am satisfied she was all of that age, the only thing I would hesitate in issuing her a License for; is that she did not look like she was as intellectual as she might have been; and that I think was all the cause of her trouble;

[1] The girl was really only 14 years old at the time.

not being any too bright, and getting violently mad, she just up with the shot gun and blowed the little girls head partly off,[1] but she having never been adjudicated insane either in this County, nor in the County in which she lived; the law gave me no right to refuse her a license; if they fill all the requirements of the law, then it became my duty to issue a marriage license to the parties applying for them; or that is what our Statutes of this State sets out. You know or ought to know with your experience and observation that when us poor mortals get in trouble, we resort to any thing even to lie about our age, and I am satisfied that is what this woman done in this case; trying to make the case as plain to you as I can, and hoping you will understand the Case better; I remain

Yours Respectfully

To grant licenses to candidates below the minimum marriageable age is another form of violation for which the excuse most commonly given is that the girl concerned is pregnant. As we have noted in Child Marriages, this claim of pregnancy is sometimes a false one.[2] In any case, marriage is not the only or always the best solution of the difficulty, especially when the prospective mother is under 16.

Sometimes failure to comply with the law's requirements is due to pure carelessness. Thus, a social agency notified an Indiana issuer that two sisters, both below the legal minimum age for marriage, were planning to marry. The issuer ordered his deputy to withhold licenses, but this instruction was overlooked and only a few days later licenses were granted to them. These sisters were 15 and

[1] This child was her stepdaughter.

[2] See our book on Child Marriages, p. 80.

12 years old, but their mother swore that they were both 18, and she was allowed without challenge to give dates of birth for the two which were only 16 days apart.

Finally, issuers who show applicants how to evade the marriage law can have little respect for its true intent. For example, at one license office in the southern part of New Jersey, candidates who objected to the state's advance notice law were advised to go to Philadelphia instead. Similarly, a license issuer in Texas told us without hesitation of a candidate who admitted that he was under the legal age, and explained further that as this applicant looked older than he really was he advised him to go to the next county and swear at the license office there that he was of the required age.

(3) *Prosecutions for Violation of the Law Furthered by Issuers.* In only 7 offices did we find indications of an active interest in having offenders prosecuted who had sworn falsely or had procured a marriage license illegally in some other way. Prosecuting officials are sometimes very unco-operative and this tends to discourage complaints, but the obligation of the issuing official in such cases is indicated in a letter from the Attorney General of New York State in reply to an inquiry addressed to him by a group of license issuers with regard to the punishment of careless celebrants. He writes:

> Enforcement of criminal law in each county is intrusted with the district attorney. As the town or city clerk issuing the

licenses is the only officer who has control of the records of such issued licenses, is the only person aware of their return with the marriage certificate, and furthermore since he cannot fully perform his duty under section 19 of transmitting the licenses and certificates to the county clerk, until their return to him, it is reasonably incumbent upon the town or city clerk to call the attention of the district attorney to cases in which there is a continued failure to send back a license.[1]

The logic of this applies not only to the punishment of those officiants at marriages who do not observe the law but also to its violation by candidates and their witnesses. The following examples are illustrative:

An Illinois issuer had one candidate fined $300 and sent to jail for six months for perjury. Now, when he discovers that candidates for licenses are willing to swear falsely to their ages, he cites this instance with good effect.

A deputy license issuer in Massachusetts states that he reports all cases of false application to the police department.

An issuer in Kansas says that, in some cases, he has discovered falsification after the issuance of the license but before the marriage. He gives the candidates their choice of returning the license or of facing criminal prosecution.

In 12 license offices we found marked indifference to the punishment of perjury and of other illegal practices.[2] Sometimes we received definite statements to this effect; sometimes it was clear that

[1] Report of the Attorney General of New York State for 1913, Vol. 2, p. 481.

[2] For a fuller discussion of perjury at the marriage license office and the difficulties encountered in punishing it, see Chapter XIV, Records and Penalties, pp. 308–312.

candidates found guilty of perjury at one marriage license office had been able to procure their license at another nearby office because no warning had been sent from the office of first application.

(4) *Explanation of the Provisions of the Law to Candidates.* Clear, printed instructions with regard to the requirements of the marriage law were given to candidates in only 5 of the license offices. Such explanations are so important that we reproduce in full from a manual of 124 pages issued in England for the registrars of marriages, who are the marriage license issuers over there, the following passage:

Signature and Attestation:—Before the Declaration is signed by the Person giving the Notice, the Registrar must thoroughly satisfy himself that such Notice is in strict compliance with the conditions already set forth in these Regulations. If he has any reason to believe either that there may be some lawful impediment to the proposed Marriage, or that, as regards some other Particular, the Declaration about to be made would be false, he should refuse to allow the Notice to be signed until satisfactory proof that no impediment exists or of the truth of such Particular is forthcoming. It is, moreover, his duty to impress upon the Party the serious nature of the Declaration about to be made, and to point out that if the Declaration be false he or she will be liable to Prosecution for Perjury; and this can be better done by a few simple explanatory words than by using the technical language of the last paragraph of the Declaration, which to an illiterate person would convey little or no meaning.

Registrars of Marriages must distinctly understand that in witnessing and attesting Signatures to Notices of Marriage they are not to regard the act as a purely formal one, like witnessing the signature to a deed or other legal instrument as to which the witness has no responsibility for the character of the document

signed. A Registration Officer who attested a Notice containing a false statement which he ought to have detected, but did not, would incur the Registrar-General's severe censure, and a heavy responsibility besides.[1]

III. THE APPOINTMENT AND ELECTION OF LICENSE OFFICIALS

But the crucial thing, after all, is the type of official to be entrusted with enforcement of the law. In 8 states, a city or township official issues the licenses and 6 of these 8 are in New England states; the other 2 in this group are New York and New Jersey. In 40 states the issuer is a county official, who is a clerk of one of the courts in 15 of the 40; he is a clerk of the county in 13 states, a probate judge in 5 states, a county judge in 3, a recorder in 2, a register of deeds in one, and an auditor in one. In the District of Columbia the issuer is the clerk of the Supreme Court of the District.

Of course many marriage license issuers have other duties. In addition to the court services which devolve upon the largest number of issuers, the town, municipal, or county clerks are responsible for a variety of functions including certain duties at elections; some collect the vital statistics of their district and many issue other kinds of licenses. The last is true in a majority of the states, and it often happens that the other licenses are of a character that need

[1] Regulations for the Duties of Registrars of Marriages and their Deputies. Darling and Son, London, 1905, p. 33. These regulations were still in effect in 1926.

merely to be bought and paid for. This fact alone would account for the tendency already noted to regard a license to marry as belonging in the same class with most other licenses, though the others deal with such matters as hunting and fishing, carrying revolvers, peddling, owning a dog, and so on. New York City is one of the few places in the country in which the issuance of marriage licenses is the largest single responsibility of the issuer.

In so far as possible, the administration of marriage laws should be separated entirely from more routine duties, though this separation is not practicable in a large number of offices in which marriage license procedures do not require the full time of one person. Where the work if placed entirely in the hands of one official or his deputy would be sufficient to constitute a full-time task, concentration of duties should be encouraged. The person chosen for the work could be designated as "marriage license clerk" or, in larger offices, as "chief of the marriage license bureau." Such an appointee, if carefully chosen and protected by the merit system, would in time come to exert a progressive influence upon issuers in smaller places who must necessarily combine marriage administration with other public functions. Another and still better way of advancing standards would be to place all local marriage license officials under the supervision of some state bureau competent to devise and to require uniform standards of issuance.[1]

[1] Chapter XV, State Supervision, pp. 314–329.

In most states at the present time the official who issues marriage licenses is elected. In Massachusetts, Rhode Island, and Connecticut, some cities appoint their issuers, in some he is elected by popular vote, and in still others by the city council. In New York State issuers are appointed in the cities but not in the towns. In New Jersey and the District of Columbia the office is an appointive one, but in Los Angeles County, California, the county clerk who issues marriage licenses is selected by competitive examination. Places in which civil service reform has made headway put all subordinates in license offices under the classified service. In an Indiana city, on the other hand, where the license issuer was elected and where the office was held alternately by two men for several successive terms, we found the former official serving as deputy until another turn of the wheel placed him again in charge of the office. One license issuer in Michigan, referring to his campaign expenses, assured us that a candidate "spends more than he makes." Another in North Carolina explained that it was hard on a man who must run for office to expect him to question the honesty of the apparently honest applicants for marriage licenses. Still another in New York State said that, as his position was given him for political reasons, it was clearly his duty to accommodate applicants and make friends for the Republican party. His deputy had objected to being routed out of bed or called from the theater to issue a marriage license out of

hours, but this deputy had been warned by the chief that a license application must receive attention in any case; if he did not wish to take this much trouble he could send the candidates to his superior officer. A license issuer in New Jersey assured us that he could hold office as long as he remained in favor with those who controlled the dominant party.

The elective system does not always mean short tenure of office. Fairlie wrote in 1906 of a town clerk, elected annually, who had held that position since 1870.[1] In Springfield, Massachusetts, we found that the license issuer, also elected annually, had been in office 32 years. Boston, under the appointive system and with many political changes, has had but 4 issuers since 1849. New York City, under the appointive system, had an excellent license official (now deceased and succeeded by his assistant) who served for 22 years. It is possible that professional men and other citizens specially interested in the careful keeping of public records are partly responsible for these long tenures. In a number of places, however, we find that an issuer is still expected to serve just 2 terms and then, as one official has put it, "give someone else a chance." Deputies change less often.[2]

[1] Fairlie, John A.: Local Government in Counties, Towns, and Villages. The Century Co., New York, 1906, p. 158.

[2] "The clear tendency is to the development of a professional deputy staff, the chief offices being temporarily filled by men whose business interests are more or less directly affected by the particular office held." William L. Bailey in *Annals of American Academy of Political and Social Science*, Vol. 42, May, 1913, p. 22.

The salary system of compensation for license issuance is the only one that avoids certain very grave evils. In 5 states officials charged with this duty still receive fees only, and in 19 others they are paid salaries in certain license offices and have fees or else small salaries supplemented by fees in the others.[1] In Wisconsin, where the salary system prevails and all license fees must be turned into the county treasury, we found that in at least 3 counties the license issuers were retaining the special affidavit fees paid by candidates for marriage. To a certain extent at least this practice may break down the advantages of the salary system.

The salaries of license officials are fixed by law. They range from $10,000 a year in one office, and $9,000 a year in a few others, to less than $1,000 a year in the small offices. A majority of the salaries are under $2,000. As already indicated, the first deputy is, in large offices, the real marriage license official. Places that fix his salary usually pay him less than $1,500. As a rule county salaries are paid out of general funds, though in a few states license issuers are compensated out of the fees received in their offices. Thus, in Illinois, the county clerk must collect sufficient fees from all sources to pay the office salaries. For a part of his service, such as the registration of births and deaths, no fees can be collected. Under this system the office may be

[1] See Appendix B, Table 3, p. 370, where these states are listed.

exposed to the temptation of issuing as many marriage licenses as possible.

In 14 of the 70 offices selected we found that the deputies in charge of issuance of the marriage licenses were women, and that one of these was an unopposed candidate to succeed her chief. In a fifteenth office, a woman already occupied the position of head of the office and occupied it well. Her assistants were trained business women, one of whom was a college graduate. In 1927 reports from the various states for the latest year for which the figures were available showed 6,070 license issuers in the United States, of which number 602 were women. Table 1 (page 82) shows the distribution by states.

We cannot repeat too often, in reviewing this part of our findings, that the developments and reforms so much needed in marriage license offices today will have to take the direction indicated by the best administrative practice already found there. To sum up briefly: The state's representative who performs this important function should:

Know the state law and observe its provisions scrupulously;

Know the provisions of the marriage laws of other and nearby states and give no one assistance in evading them;

In the absence of any contrary legal requirement, see that both candidates for a license appear in person and be sure that both understand the nature of the document or documents to which they affix their signatures;

Give each candidate a printed statement in which the marriage law is simply and clearly explained, require each to read it, then make sure that both candidates understand it;

TABLE 1.—NUMBER OF LICENSE ISSUERS BY STATES

State	Total Issuers	Women Issuers	State	Total Issuers	Women Issuers
Alabama	67	0	Montana	56	8
Arizona	14	3	Nebraska	94	0
Arkansas	75	4	Nevada	17	5
California	58	5	New Hampshire	253	28
Colorado	63	11	New Jersey	548	30
Connecticut	168	12	New Mexico	31	6
Delaware[a]	3	0	New York	994	129
District of Columbia	1	0	North Carolina	100	7
Florida	67	0	North Dakota	53	0
Georgia	161	2	Ohio	89	4
Idaho	44	10	Oklahoma	77	18
Illinois	102	2	Oregon	36	2
Indiana	92	7	Pennsylvania	67	10
Iowa	99	8	Rhode Island	39	0
Kansas	105	9	South Carolina	46	1
Kentucky	120	9	South Dakota	64	4
Louisiana	64	0	Tennessee	95	1
Maine	522	104	Texas	252	37
Maryland	24	1	Utah	29	2
Massachusetts	353	22	Vermont	254	52
Michigan	83	4	Virginia	119	0
Minnesota	87	3	Washington	39	6
Mississippi	82	4	West Virginia	55	0
Missouri	115	16	Wisconsin	71	12
			Wyoming	23	4
			Total	6,070	602

[a] In Delaware, justices of the peace, who sometimes issue licenses, could not be counted.

Notify all nearby issuers whenever a license has been refused for reasons brought out by inquiry;

Avoid granting favors, with or without return, to any seeking financial advantage (directly or indirectly) through their contact with prospective brides and bridegrooms;

Receive no gratuities, make no sales, and impose no charge over and above the amount stipulated by law for license issuance;

Maintain regular office hours and require applications for licenses to be made within those hours save in cases that can be demonstrated to be, when strictly interpreted, great emergencies;

Know the different forms of evidence, chiefly documentary, that are most likely to reveal the truth about applicants for marriage licenses, and demand these when necessary;

Assure respect for the office and its better administration by active participation in bringing perjurers to punishment when possible, and by doing everything possible to see that the fines and penalties authorized by law are imposed.

CHAPTER IV

EXPLOITATION

PROSPECTIVE bridegrooms are eminently exploitable; their mood is a mood of expansiveness. It often follows that they are the victims of sharp practice, and that around the various processes involved in the state's relation to matrimony—the issuance of licenses, the marriage certificate, the wedding ceremony even—small extortions are permitted to creep in. Some cities and towns actually allow such practices to become habitual. It is true that no one of these unjustifiable exactions is on an heroic scale, but taken altogether they do have the effect of detracting from the dignity of the state and of cheapening the institution of marriage. For certain license officials matrimony is no more than an over-the-counter thing, while even in the eyes of the principals to a marriage it can become somewhat belittled and dishonored.

I. THE MARRIAGE MARKET TOWN

Exploitation of the marriage ceremony, in the English-speaking world at least, dates back to the seventeenth century and to Fleet Prison days. Public marriages were very expensive affairs then, so the

substitute practice grew up of marrying quietly, sometimes clandestinely. This fact was taken advantage of by "certain real and pretended clergymen in and about the prisons—not, however, on account of any *real* privilege or exemption attaching to . . . prisons . . . but because these Fleet parsons were generally prisoners enjoying the Rules of the Fleet, and had neither liberty, money, nor credit to lose by any proceedings the Bishop might institute against them."[1] By the eighteenth century things had grown notoriously bad. "In walking along the street in my youth," wrote Pennant at the end of that century, "on the side next to the prison I have often been tempted by the question, *Sir, will you be pleased to walk in and be married?* Along this most lawless space was hung up the frequent sign of a male and female hand conjoined with *Marriages performed within* written beneath. A dirty fellow invited you in. The parson was seen walking before his shop; a squalid profligate figure, clad in a tattered plaid nightgown, with a fiery face, and ready to couple you for a dram of gin or roll of tobacco."[2]

This scandal was checked by the passage in 1753 of the Hardwicke Act. But with the discontinuance of Fleet marriages came resort to the original Gretna Green, which was a village in Scotland just across the

[1] Burn, John Southerden: The Fleet Registers Comprising the History of Fleet Marriages, and Some Account of the Parsons and Marriage-House Keepers, with Extracts from the Registers. Rivingtons, London, 1833, p. 6.

[2] Quoted by John Ashton in The Fleet: Its River, Prison and Marriages. T. Fisher Unwin, London, 1889, p. 344.

border from England. Here, for many years more, came eloping couples who had failed to obtain the consent of parents or who were unable to meet some other requirement of the English law. Fees varied at Gretna Green "from half a guinea to a sum as large as impudence could extort or extravagance bestow,"[1] and no clergyman was required. Under Scotch law the only form necessary was that two persons should declare their intention before a witness to take each other as husband and wife. These Scotch fee-takers were witnesses.

In America, protest was made early (1673) against profitable traffic in runaway marriages. In that year the governor of the colony of Virginia sent a formal communication to the governor of Maryland on the subject of the marriages celebrated by Maryland clergy between pairs who had crossed the Potomac by stealth for that purpose.[2]

For reasons sometimes good and sometimes bad, secrecy and speed in obtaining a marriage license and getting married continue to this day to be in demand in certain quarters.[3] Usually the town which meets that demand is accessible to travelers from other states, and is provided either with a state marriage law having marked weaknesses, or else with an issuer who is too interested in fees to ask any embarrassing

[1] Encyclopædia Britannica, Eleventh Edition, Vol. 12, p. 583.

[2] Bruce, Social Life of Virginia in the Seventeenth Century, p. 233.

[3] For a discussion of these reasons, see Chapter VII, Hasty Marriages, pp. 148 and 164, as well as Chapter VIII, Clandestine Marriages, pp. 168–174.

questions. The place may qualify in both of these particulars, but for it to be a marriage market town the impression must somehow have gone abroad that getting married is there made unusually expeditious and easy.

It is difficult to state with certainty the number of Gretna Greens or marriage market towns (as we prefer to call them) in the United States today. They vary from year to year with changing administrators and changing laws; but federal statistics gathered annually on a county basis from marriage license offices furnish some clue, making it possible to compare the total of licenses issued in a given county in that year with the county's population and then to establish a ratio between the two. This could only be done, however, where the county happened to be the unit of administration for license issuance, but usually it is the unit. By assuming that where the county ratio was more than twice the size of the state ratio the county seat was in all probability a marriage market town, we were able to make a list of places that we believed could properly be so characterized. The evidence thus obtained was then compared with all the data we had been able to procure from press clippings, our correspondence, our field visits, and other sources; with the result that, after this thorough revision, 57 marriage market towns in 29 different states remained on our list.

It is more than likely that 57 is an underestimate, for a very populous county can attract many non-

resident candidates for marriage from other places without having its percentage of issued licenses greatly increased. It is an interesting fact that not one of these 57 marriage market towns is in a state that for any considerable time has had a complete advance notice law.[1] Another fact worth noting is that, between 1922, when we made our first analysis, and 1925, the year of our second analysis, there had been a decided increase of the marriage rate in more than two-thirds of these places.

We have visited and studied on the spot license issuance and the other aspects of our subject in 15 marriage market towns in 11 different states. Eleven of these towns were near the state border and drew much of their patronage from places in adjoining states; the other 4 were not near the border and drew their trade from the more populous towns and cities in their own state.

In the course of field visits to marriage market towns the statement was made to us repeatedly, either in set terms or in effect, that "It pays to advertise." Furthermore, the civil officiants and the license issuers in these places were in the habit of explaining the large number of non-resident marriages entered in their local records by the fact that the facility with which marriages were licensed and celebrated in the town had received a large amount of newspaper notice, some of it critical but more of it facetious.

[1] Such laws are described in the next chapter.

One deputy license issuer in a small place near the border of the state explained the sudden and large increase in the number of licenses issued from his office by the fact that, during a holiday season preceding the increase, five or six pairs of candidates had come from another state to be married, and that in their home city some distance away a daily paper had written up these marriages in such fashion as to convey the impression that the town was a genuine Gretna Green. For a number of years thereafter, as a direct result of this publicity, it became one. A mail-order traffic in licenses seemed to have been developed, and appearance at the license office was not required. "It is purely a business proposition," the deputy told us. "The more marriages there are the more fees the clerk receives, and the fees make him interested to drum up trade." This office happened to be on a fee basis; the sum of $1.50 was granted to the clerk for every marriage license issued.

No one who takes a serious interest in the relation of the state to marriage is likely to be seeking information about marriage market towns for a selfish reason, but we are so little inclined to advertise these places, even indirectly, that we are suppressing their names in this chapter and elsewhere. In order to give some idea, however, of representative practices in the "marriage mills" of the United States, we have chosen, from the 15 that we know, 4 that seem to us fairly typical of the larger number. These 4 we describe in some detail.

Marriage Market Town No. 1. The relation of physical environment to the successful development of this traffic is illustrated in the first marriage market town selected. Though it is a county seat, it is only a small place of a few thousand inhabitants. There are other marriage market towns in the same state. This one, however, happens to be not only near the state line at a point where it touches 2 other states, with a third conveniently near, but through the town a railroad passes which connects several large cities, and about half way between 2 of them lies this convenient marriage resort.

At the time of our first visit, every arriving train was watched narrowly by the local taxi drivers for prospective brides and bridegrooms, and the complaint was made that, in the eagerness of the taxi men for fares and fees, women accompanied by an escort were often exposed to grave annoyance near the station. Later, however, those engaged in the taxicab business formed an incorporated company and procured from the railroad the exclusive right to solicit traffic on its premises.

Our examination of 100 consecutive records made during that visit revealed that 86 marriage licenses were issued to non-residents of both county and state, who had come to town for no other purpose presumably than to be married. Of the remaining 14, 11 were issued to residents of other parts of the state, and only 3 out of the 100 had been granted to candi-

dates one or both of whom resided in the county served by the office.

Next to the taxi men, the most active developers of this trade were found to be a minority of the clergymen of the town, some of them without a charge. Pastoral relations between one of the churches and its minister had been dissolved owing in part to the fact that he devoted so large a share of his time to marrying candidates who came from other places and were unknown to him. A second clergyman had been unfrocked by his church superiors for dividing his marriage fees with the taxi drivers. Out of 96 marriage returns examined at the license office, 76 were signed by a third minister—a clergyman without a pastorate who happened to be in good standing with the drivers. As these latter made no secret of the fact that they expected any minister favored with their trade to divide his marriage fees with them, and as nearly twice as many marriage licenses were issued yearly from this office as there were inhabitants in the town, the situation at the time of this visit looked like a sum in multiplication and division.[1]

A second visit made in 1928 revealed some interesting changes. The drivers had, after their incorporation, seemed for a long time in a stronger position than ever, and trainmen were even observed by our field agent to signal to them the number of couples

[1] The characteristics of marrying parsons are more fully described in Chapter XIII, The Marrying Parson.

who were believed to be on the incoming train. But many more travelers were coming by automobile than formerly. In order to meet this new situation, the local taxi men were reported to make a practice of stationing scouts on all the main roads into the town. These scouts trailed cars believed to carry occupants who might be in search of a marriage license.

It may be that two recent and encouraging developments in the town will put an effective check upon this whole traffic, though it is still thriving as we write. A newly elected license issuer and his deputy are refusing to issue licenses out of hours. They are also refusing licenses to persons who look younger than they claim to be. When, however, this license issuer required that candidates be asked at the office for their denominational preference in order that the name of the local clergyman of their chosen faith might be entered on the license, the taxi company applied for an injunction to restrain the issuer. The case had been heard by a referee, but a decision had not been rendered at the time of our visit.

The second encouraging development is the actively aroused indignation of a majority of the clergy of the town and a majority of its best citizens. They have already tried to procure a better state marriage law, and their attempt will be renewed when the next legislature meets.

Marriage Market Town No. 2. If taxi drivers and marrying parsons may be said to be the chief actors

in the sordid drama of Town No. 1, their place is taken in Town No. 2 by civil officiants of marriages who are also justices of the peace. The place is a county seat of 4 times the size of town No. 1. It is situated on the state border, and a large city in the state immediately adjoining is very near.

At the time of our earlier visits to this place it had 6 marrying justices of the peace who, after forming a combination, had opened in a central location a store with the sign "marriage parlor" in large letters running across the width of the building. At least one justice was in attendance every week-day and evening. A large annual return was said to be divided among the 6 partners. The business card of one of them announced, "Weddings kept secret if desired. All weddings strictly private." Two social workers—a man and a woman—who visited this Marriage Parlor on a tour of inspection were told by the justice present that if they wished to be married the charge would be $3.00, and if they wished the fact of their marriage kept out of the newspapers the charge would be $3.00 additional.[1]

There was an ordinance against what are known as "runners"—persons employed, that is, to induce strangers to engage the services of marrying justices[2]—but after the combination of justices was dissolved, as it was several years ago, competition among both

[1] Marrying justices in places other than marriage market towns are described in Chapter X, The Civil Officiant, pp. 220–232.

[2] Among the other names that have been used at different times and in different places for these runners are "cappers," "plyers," and "touts."

magistrates and runners became much sharper, and new legislation against the latter seems up to the present time to have been very ineffective. During our last visit in 1928 city officials complained of the difficulty of getting court evidence sufficient to convict. Recently, for instance, an out-of-town pair had been accosted by a runner who jumped on the running board of their automobile. They thought him a federal officer and, upon learning their mistake, appealed to the city attorney, with a promise to return and testify against the importunate fellow. But this they failed to do.

The large proportion of strangers attracted to the town by the ease with which licenses are issued and marriages celebrated was shown by our examination of 100 marriage license records during our first visit. At that time—and the traffic is even larger now—79 of the 100 licenses were issued to candidates both of whom were in each case residents of other states, 15 to candidates from other parts of the same state, and 6 to pairs who lived, either one or both of them, in the county. Of 97 marriage returns examined, 87 were signed by civil officiants and 10 by clergymen.

Marriage Market Town No. 3. This is a small suburban town connected by trolley with a large city. Unlike the 2 places already described, it attracts few out-of-state candidates for marriage licenses, but until comparatively recently it has done a thriving business in licensing and marrying residents of the nearby city. Choice of this place for out-of-town

marriages does not seem to have been due to any unusual degree of laxity on the part of the license issuer, but to the enterprise of a civil servant who was known as the marrying justice of the county. This justice explained, when visited, that few candidates came to him in the earlier years of his official life, because a fellow justice made a practice of sitting in the hall of the court house and soliciting the patronage of all applicants for marriage licenses as they entered. The income derived from the newer justice's own office was too small to maintain his family, so he decided to advertise in the street cars of the nearest large city and to build up a marrying business. His methods were arresting. One street-car advertisement of his (in which a third justice co-operated) read:

Sweetheart:

Be ready at four o'clock—we'll go to . . . , just a short ride and Justices . . . and . . . will tie the knot—bring your sister and I'll have Bill.

JOHN

P. S. You know Justices . . . and . . . are the marrying Justices of the County.

By phoning the above [telephone] numbers, arrangements can be made for evenings or Saturday afternoons.

Another card, which was decorated with two red hearts, contained the following doggerel,

As these two hearts are intertwined,
So may your lives be bound,
And when you've set the wedding day,
At . . . . . I'll be found.

This advertising attracted the attention of reporters of the large city's daily papers, who interviewed the justice and wrote much about him. His street-car notices were continued for a number of years; so were the unpaid-for items in the news columns of the press. But gradually other matter crowded out these marriage stories, and the justices at the court house are not so busy now.

Marriage Market Town No. 4. This town, though containing less than 30,000 inhabitants, is twice as large as any of those already described. It is readily accessible from a large city in the same state, and the border of an adjoining state is not far away.

License issuance, as conducted at the time of our visit, was a thriving business, though, as the issuer remarked to us, very few pairs arrive at the office without someone "hanging on to them." According to the issuer, one of the marrying justices of the town employed runners to solicit his trade, while the other marrying justice did his own soliciting. The hired runners operated on the streets, in the street cars, and at railway stations. The justice who was his own runner lingered around the court house and on street corners to solicit custom. The license issuer assured us that he received nothing himself from officiants, though he assumed that members of his office staff who did most of the actual issuing of licenses received small sums at times. Licenses were issued to candidates at any time—after hours, at night, and on Sunday. For their own constituents

there was no extra charge for out-of-hour service, but for outsiders they believed in getting "while the getting was good," and a flat rate of $5.00 was made. If people actually escaped the attention of runners and justices, they sometimes asked the license issuer to recommend someone who could perform the marriage ceremony, usually a civil officiant. Of 100 records examined in this office, 57 licenses were issued to non-residents of the state, 20 to residents of the state, but one or both of each of these 20 pairs were from outside the county, and 23 to residents of the county. Of 97 marriage returns examined, 71 were signed by civil officiants and 26 by religious celebrants.

The marrying justice who, unlike his colleague, did not do his own soliciting had an office centrally placed and a conspicuous sign to which he pointed with some pride, remarking to our field investigator, as officials in some other places had remarked before, "It pays to advertise." Many new comers seeing the sign applied here before going on to the marriage license office at the court house. Of all the marrying justices seen in the 15 marriage market towns visited this was the only one who discussed the subject of marriage administration with any degree of intelligence. He told the following story however:

A young man called me up one night at 10.30 to see about getting married. I told him that I was not in the habit of getting up and coming down to marry people at that time of night and that I would have to be well paid for it. The boy said he would pay me, so I came down. I took the young fellow to the license

clerk's office, having arranged for this by telephone. The boy was talkative and also somewhat lavish. He gave the runner who had put him in touch with me $2.00, and gave me a large number of cigars. At the license office he swore that he was 21, and he and the girl were married in the court house. After the marriage, he asked how much it was, and I said that I generally got $10.00 for a marriage at that time of night. The boy said he had only $1.50 left. The license issuer and I gave him a raking over the coals for getting us out at that time of night when that was all the money he had, and he agreed to telephone his father in the morning for more money and then properly repay both of us.

But it was the father who entered the situation at this point. And an angry father he was, for the boy was only 17 instead of 21.

Since our visit, there has been a change in personnel among the marrying justices of this town, and we find that they no longer work in competition. According to the latest census figures the marrying business, under this new arrangement, is more thriving than ever.

The types of exploiters most often found in marriage market towns—the marrying justice, the marrying parson, the taxicab driver (for without any official connection he figures largely), the runner, the too obliging license issuer—all these have played a part in making the places just described either celebrated or disreputable, as one may happen to view it. Without need of comment the facts tell their own story.

There has been no mention, however, of a combination of runner and interpreter found in one of

the places we visited; and no mention, in this connection at least, of the professional witness.

In one coast city, the interpreters used by the justices and paid only when called upon were continually in the corridors of the court house. These men served also as marriage runners, even going so far as to suggest marriages between boys and girls who happened to have been brought into the juvenile court. They also made all the necessary arrangements for the ceremony. Unlike most other runners they collected fees directly from the candidates instead of from the officiants, though, with foreign clients, they were likely to claim that both a civil and a religious ceremony was necessary, and that the justice must be paid $5.00 for officiating. In this city the activities of runner-interpreters assumed such proportions that they were investigated by the civil service commissioners of the county. Later, an official interpreter was employed on a salary. The runners continued to ply their trade, though not so openly.

As noted elsewhere, in some states witnesses are required who can testify at the marriage license office to their personal acquaintance with candidates.[1] The instructions of one state registrar to issuers in his state are that witnesses should be able to swear that they have known the applicants intimately. This is done with cheerfulness (for a gratuity) by professional witnesses who often serve as runners also.

[1] Chapter III, The License Issuer, p. 56.

As we have seen, newspaper publicity is usually courted by the marriage market town. License issuers have sometimes said to our field representative that publicity given to their many out-of-town marriages advertised not only the office but the town. Even when published accounts deplored the ease with which marriages were effected, these items suggested to many persons that here was the very place for which they had been looking. On the other hand, it should be noted that certain forms of extortion have been exposed and made unprofitable by the newspapers. More often, however, the press has merely treated the marriage market town as a joke, and has used in discussing it such expressions as the following:

The principal factor in a marriage these days seems to be the amount of gas in the tank.

J——— is becoming especially popular with couples [from this city] about to float their matrimonial gondolas.

Evidence of an increasingly satisfactory nature has been accumulating that ———— is . . . the Ultima Thule of all true seekers of life happiness. But a new line of evidence has been found. [It] has become the Gretna Green not only for the Pacific Coast, the Rocky Mountain states, but for the entire United States as well.

Elopements, always popular with young people who "just can't wait," are now sanctioned by high society in the East, and ———— is reaping its share of the benefits. . . . Now that elopements are quite the thing, the revenue from marriage licenses promises to amount to a substantial sum.

A Chamber of Commerce in one bustling place

calls attention, in its publicity, to the advantages of being married in that city. The Chamber claims that it desires "a legitimate resort marriage business."

II. OTHER FORMS OF EXPLOITATION

In a state that permits applications for marriage licenses before a notary, one of the jewelers in its largest city has been commissioned to act as notary. He advertises that if a wedding ring is bought at his store he will obtain a marriage license for the purchasers free of charge. In Toronto, Canada, owing to a similar law in force until 1921, more than four-fifths of the 137 persons empowered to issue licenses are reported to have been jewelers.[1]

Wherever, as is still the case in a few states, either notaries or justices of the peace are permitted to receive applications for such licenses, thus doing away with the need for the personal appearance of either candidate at the license office, abuses follow. Notaries and justices often accept the statements of candidates without challenge; some even undertake to arrange the whole matter with secrecy and to supply the needed officiant at the marriage. We have mentioned before that in Pennsylvania, where application through notaries is allowed, the Philadelphia license issuer has refused to receive any applications unless made by the candidates themselves

[1] Interim Report of Commission Respecting Issuers of Marriage Licenses. Toronto, 1921, p. 4.

in his own office. Philadelphia notaries tried at one time to evade this decision by sending applications for licenses to a nearby town in which the issuer was more co-operative. Later, however, these notaries were enjoined by the Attorney General of the state from sending applications to any license office outside their own county.[1]

The strong popular interest in marriage ceremonies has been seized upon by enterprising exhibitors, dance-hall proprietors, and so on. Thus we have a number of instances on record of marriages performed at public expositions (in one case on a float in a street parade); at amusement parks (on the Ferris wheel, for example); at motion picture studios before the camera; at midnight on June 1st to earn the prize offered by merchants for the first June bride; in an airplane at an athletic meet of policemen; on the stage of a theater at the close of the performance; in a swimming pool; at a radio station from which the ceremony was broadcast. None of these practices can receive detailed attention here, but they are mentioned in passing as illustrations of the tendency to commercialize a ceremony that should be protected from such exploitation by every one authorized by the state to officiate at a marriage.

Though marriage brokerage is illegal, the correspondence clubs, matrimonial periodicals, and matrimonial advertisements in certain daily papers are not so as a rule. In 1922 the Post Office Department

[1] Opinion of Attorney General, December 31, 1919.

issued a press statement denying responsibility for the unhappy consequences of courtships conducted by mail. The statement says in part:

In the legal division of the Post Office Department almost daily letters are received from deserted brides, distraught and frantic in their misery, asking for governmental assistance in locating runaway husbands and pleading for aid in prosecuting them. In some instances these wives blame the postal service for their marital woes, demanding redress and claiming that as they were wooed entirely through the mails, the Post Office Department is directly responsible. An excerpt from one of these letters typical of all the others reads like this:

"I want to know if I can start suit against my husband. We married through a correspondent club advertised in the newspapers and he sent me money by a post office money-order to come and marry him. He also courted me by mail. After the wedding he failed to support and take care of me and finally left me altogether. I want to know if I can do anything through the Post Office Department as our business, such as arranging for the marriage details, was transacted entirely by mail."[1]

It is not within the scope of the present volume to discuss possible remedies for this state of affairs. Many of them lie altogether outside the field of law or of public administration. But an examination of the unsavory literature of the commercial matrimonial bureau and its various ramifications suggests that these activities are supported best wherever a given community has failed to make adequate, non-commercial provision for the joint amusement of young people of both sexes under wholesome condi-

[1] Release of July 31, 1922.

tions. Solitude and monotony spell disaster for the human being who is without personal resources far above the average.

The question of what to do with the marriage market town and the other pettifogging exploitation described in this chapter is answered in part by the advance notice plan now to be described. Other aspects of marriage administration, however, are so intimately related to that aspect, especially wherever they touch interstate relations, that we shall reserve any formal suggestions and proposed remedies for the Gretna Green evil until clandestine marriages and the evasive out-of-state marriage are considered.[1]

In the last analysis, though, public opinion is the key of keys. Wherever there is little sensitiveness to the spiritual values of family life or where there is even a degree of indifference to its decencies, selfish motives are permitted to shape administrative procedures in the state's relation to marriage, and to shape them unchecked. Given in addition certain advantages of location, the marriage market town is very likely to make its appearance.

Champions of reform, in their attempt to do away with some one particular evil such as this one, often make the mistake of selecting from all the reform measures advocated anywhere the most radical and, as they conceive, the most thorough. The chosen measure or measures may be quite unenforceable at

[1] Chapter VIII, Clandestine Marriages, pp. 178–186, and Chapter IX, Evasive Out-of-State Marriages, pp. 206–213.

the time or, if enforceable, reformers may never have counted the cost of enforcement. We repeat that next to an educated public sentiment, the administrative details are the important things to strive for in any campaign for better state regulation of marriage.

CHAPTER V

ADVANCE NOTICE OF INTENTION TO MARRY

APART from close attention to administrative details supplemented by general supervision of marriage license service under some central state authority, there are 2 legislative measures that would go far toward putting the marriage market town out of business. The first of these is a law requiring that, when 2 persons come from outside a state to marry there, they must bring with them a license issued in the home district of the woman candidate, as proof that the marriage would be sanctioned by the laws of the state in which she has a residence. This "double license plan," which is to be explained later,[1] has never been tried as yet and cannot be tried with entire success without some form of interstate understanding. The second measure needed to stabilize the situation is an advance notice of intention to marry required by each marriage license office of a state before a license can be issued. Such a plan has been in successful operation in a few states for many years.

[1] Chapter IX, Evasive Out-of-State Marriages, pp. 208–210.

I. ORIGIN OF ADVANCE NOTICE

In effect, the system of publishing the banns was an earlier but no longer practicable form of advance notice of intention to marry. Banns before marriage had been the custom of some Christian countries long before the procedure was required of them all by the Lateran Council of 1215. As certain disqualifications for marriage were recognized, safeguards had to be devised. Charlemagne in 802, for example, checked clandestinity by forbidding the celebration of any marriage until "the bishops, priests, and elders of the people had made diligent inquiry into the question of the consanguinity of the parties."[1]

To further the recognition of similar impediments where they exist, publication of the banns has been customary in France since the ninth century. Imagine the astonishment of Portland, Oregon, however, when in the year 1919, the Registrar of Pont-à-Mousson appealed in a letter to the Mayor of Portland, requesting that a notice be posted in some public place which should announce that a certain soldier of the American Expeditionary Force who came from Portland contemplated marriage with a certain French girl—the names of both to be attached. It should be further announced, he represented, that the marriage would be duly celebrated "if no legal or parental objection" was reported. "This system,"

[1] Encyclopædia Britannica, Eleventh Edition, Vol. 17. Article on Marriage.

the Registrar explained, "is in vogue to prevent any undue haste in marriages in France."[1]

It is not apparent that the few advance notice laws that have been passed in the United States were originally framed with a view to preventing "undue haste in marriage." As we have seen, New England turned very early to civil marriage procedures. It was natural, therefore, that this particular group of states should have been the first to adopt a satisfactory substitute for the system of civil publication of the banns, though they took their time in doing it. Publication of the banns was well fitted to the community with a fixed population. The substitute finally adopted in New England required advance notice of intention to marry to be given to the proper civil authorities and to be followed by a certain interval before the marriage license was issued. These civil requirements were intended—in Massachusetts and Rhode Island at least—to prevent out-of-state marriages. In this they have been fairly effective, though their advantages have not stopped there. They are also especially well adapted to the needs of the shifting and diversified groups in our modern cities.

Maine is the only state in the Union that has had an advance notice law on its statute books continuously. Civil publication was required there originally for 14 days. When this law was repealed in 1858, an act calling for 5 days' advance notice of intention

[1] Portland, Oregon, *The Oregonian*, June 3, 1919.

to marry was substituted immediately. As shown in Table 2 on the next page there was, in the 7 other states now having full advance notice applicable to all candidates, a long interregnum between the older procedure of advance publication by banns or otherwise and the present procedure of advance notice. The more modern form of notice is followed after an interval—usually an interval of not more than 5 days—by the granting of the license to all those who have satisfied the issuer that they are qualified. The old system leaned heavily upon publicity, but this was under a settled, small-town organization of society in which publicity was genuinely effective. The newer system at its best depends chiefly upon the exercise of due diligence and discretion by license issuers.[1]

II. PRESENT DEVELOPMENT OF ADVANCE NOTICE

In 1927 only 12 states had provisions that were regarded as advance notice laws, and only 8 of these states, as will be seen from Table 2, had laws worthy of the name, for 3 of the 12 placed the interval of delay *after* license issuance, and one other state confined advance notice to candidates under 21. Even so, one of these 8 requires but a two-day interval between application and issuance with a further interval of one day between issuance and ceremony.

[1] For a discussion of the relative emphasis to be given to publicity and to verification in this connection, see Chapter VIII, Clandestine Marriages, pp. 180–186.

TABLE 2.—INTERVAL BETWEEN APPLICATION FOR LICENSE AND ITS ISSUANCE OR BETWEEN LICENSE ISSUANCE AND MARRIAGE

State	Year of original law[a]	Present law fixes the interval	Length of interval (days)	Present law applies to
Maine	1858	Between license application and issuance	5	All candidates
New Jersey	1897	ditto	2[b]	ditto
Wisconsin	1899	ditto	5	ditto
New Hampshire	1903	ditto	5	ditto
Massachusetts	1911	ditto	5	ditto
Connecticut	1913	ditto	5	ditto[c]
Michigan	1925	ditto	5	ditto
California	1927	ditto	3	ditto
Georgia	1924	ditto	5	Candidates under 21
Rhode Island	1909	Between license issuance and marriage[d]	5	Women candidates who are non-residents of the state
Delaware	1913	ditto	4	When both candidates are non-residents of the state
			1	All other cases
Vermont	1917	ditto	5	All candidates

[a] In 6 of these states the provisions of the original law were different from those of the present law here summarized. In 2 states the original law was repealed and re-enacted in modified form a few years later.

[b] An additional interval of one day is required between license issuance and marriage.

[c] Extended from non-residents only to all candidates in 1926.

[d] Delivery of the license to non-resident candidates not allowed, however, until 5 days after issuance (Amendment of 1927).

The provision that licenses *once issued* shall not be used for a given number of days is relatively ineffectual, though it has some value in that it reduces the number of licenses issued to non-residents. If the issuer learns during the specified interval that a proposed marriage is not legal and should not take place he can neither recall the license nor notify the unknown officiant, civil or religious, that the license must not be used. Not until after the marriage has been consummated does the issuer know, from the returns to his office, which one of several hundred possible clergymen or civil servants has been called upon to officiate. Under real advance notice in these cases the license would never have been issued at all. Another objection to an interval after issuance instead of before is that some of those who officiate at marriages are even accommodating enough to date the marriage certificate ahead, while others do not know the law or are careless and do not note the date on the license. One city registrar writes:

I will tell you how the five day clause for non-resident women under the old law worked out. Couples would come here from without the state and would take out a marriage license on which it would be stamped in red not good until such and such a day. Clergymen and others would join them in marriage immediately, give the parties one of these fancy certificates of marriage, and date our official copy five days ahead. . . . It has always been very difficult to get evidence of such practices. I remember one instance, however, where [an officiant] went to ———— and testified in court that he had married the parties on a certain day, which was five days before the date of his return to this

office. I have no doubt that we have at least fifteen or twenty such cases every year.

In 3 of the 8 states still having real advance notice of intention for all candidates (2 of the 3 with provision for waivers, however, in certain emergencies to be described later), we have been able, in regard to the practical results achieved, to consult with license issuers, probation officers, and other officials, as well as with social workers in private agencies. While local conditions of enforcement and the absence of a like provision of law in an adjoining state do bring varying results, it is evident that under the advance notice plan there will be, year in and year out, fewer candidates from other states applying for licenses.

Evidence with regard to the effect of advance notice laws upon hasty marriages is necessarily of a more negative character than evidence of their effect upon non-resident applicants. In a general way, we have been able to observe from our examination of the output of 4 newspaper clipping services over a period of 6 years, that a much larger proportion of elopements, midnight marriage ceremonies, joy-ride solemnizations, and annulment petitions have been reported in the newspapers from sections of the country that have no advance notice law than from those having such a law. But clipping bureaus cover the newspapers of the country very unevenly, and different newspaper offices, moreover, have different standards for regulating the particular kinds of news that they are willing to print.

As a small item, however, of direct evidence of the way in which advance notice checks undue haste we have been able in a few Massachusetts cases to follow clues given at the time of application for a license by candidates who never returned at the expiration of the 5 days to claim their licenses.

One woman, when seen, explained that she was "only joking" when she agreed to marry. She did not care enough for her suitor to marry him.

Another woman must have changed her mind, for a month after her first application for a marriage license, it was found that she had married a different man from the one named in the original application.

In still another case, it was discovered that the candidates had disagreed during the five-day interval and had broken their engagement.

Not only hasty but illegal unions are prevented in many cases by advance notice. States without such laws would have been powerless to prevent marriage in the following instances reported to us by probation officers and others in advance notice states:

An Italian who had not been supporting his wife and two children applied for a license to marry some one else. The attention of a social agency was called to this fact by his wife, who had seen his name in the published list of applicants for licenses, and his arrest followed. He was sentenced to a year in prison for falsely swearing in his license application that he was single.

A license official delayed issuance in a certain case for one week upon information that the man applying for a license was suspected of having a wife already. Conclusive evidence of this

was difficult to obtain, but the applicant, learning that an investigation was in progress, did not call for his license.

A chief of police reports that application for a license had been made to the issuer by two candidates, one of whom—the woman —was a Roman Catholic. Her priest learned before the interval of five days had elapsed that the man had a wife living. This candidate was sentenced to thirty days in the House of Correction for making a false statement to a license issuer.

Evidence came to light during the five-day interval in another case that the candidate had a wife and four children.

A man who claimed to the license issuer that he had been divorced in 1918 requested that the fact of his advance application for a license be not published. The issuer allowed publication, however, and news came that the man was probably not yet divorced. It was also found that he had misstated the residence of his prospective bride. He never returned for his license.

A woman probationer of one of the courts applied for a license to marry a boy of 16, giving the prospective bridegroom's age as 19. Her probation officer happened to see the published notice of this application, and issuance of the license was prevented.

Another published notice enabled a priest to report to the license issuer the fact that the girl mentioned as prospective bride in the publication was only 13 years old.

Evidence offered to an issuer during the required five-day interval led to refusal of a marriage license on the ground that the woman applying was feeble-minded.

A published notice of intention enabled a social agency to communicate with the prospective bridegroom in a case where the girl that he had intended to marry was known to be feeble-minded. The marriage did not take place.

After a certain man had filed his application for a license, the deputy license issuer happened to see him lying on the pavement and frothing at the mouth. His license was refused on the ground that he was an epileptic.

A man applying for a license sought, at the expiration of the required interval, the advice of the issuer. His prospective bride had been twice married and twice divorced. He explained that he had proposed marriage because he felt sorry for her. The issuer advised him not to marry.

These few illustrations would seem to show that, in a number of cases, advance notice has had the effect of bringing certain definite disqualifications to light, such as the fact of another wife or husband living, of an applicant being too young to contract a legal marriage, of feeble-mindedness, or of epilepsy. Often these disqualifications, which apply to only one of two candidates, are already known to the other one, but not always. In so far as they are not known, a peculiarly vicious form of fraud is prevented. But even this does not constitute, in our opinion, the chief argument in favor of advance notice.

The greatest value of the five-day notice, though it was derived originally and more or less directly from the earlier system of banns, has come to be the opportunity it offers to the more thoughtful one of any two persons contemplating marriage to consider and possibly to reconsider. A judge who hears many divorce cases and, moreover, brings to the consideration of them a deep interest in the welfare of the people concerned, declares that, as these individual histories are developed in his court, it becomes evident to him that most of the people applying for divorces would never have married at all, unless, as he puts it, snapping his fingers, they had married "like that." The

less heedless of the two would have seen the folly of the undertaking and would, in his opinion, have withdrawn in time. The earlier system of the banns was so devised that, if any impediment existed, others could interfere and bring forward their reasons for "forbidding the banns." The prevention of deliberate fraud is important, but far more important, both for the protection of the state and the welfare of the individual, is the boon of this additional, though brief time for second thought. The state becomes able, by this means, to suggest that it has been called upon to sanction a contract which, in so far as it is a civil contract at all, transcends all other civil contracts in value and significance.

In a matter that can never be completely standardized, however, it has been found advisable in practice to allow a certain degree of flexibility by providing for a waiver of the five-day notice law under certain circumstances. With the exception of New Jersey and California, the 8 states having complete advance notice for both residents and nonresidents provide for waivers in emergencies. These waivers should be granted in each license district by a single court—by one of the higher courts only, that is, and not by justices of the peace.[1]

Recent legislation to provide an interval before license issuance furnishes an illustration of two needs; first, of public education in advance of passing a law,

[1] For a discussion of the granting of exceptions in pregnancy cases, see Child Marriages, pp. 74–82.

second, of moderation in the measure proposed and passed.

Nebraska, for example, after requiring no advance notice, adopted a ten-day notice in 1923. Not only the officials but the jewelers of the various cities made vigorous protest that there was a reduced number of marriages celebrated within the state under the new procedure. They succeeded in repealing the law. In all probability it was a mistake to adopt so long an interval as 10 days in a state which previously had required none at all. The animus of the objectors, however, is shown in the following extract from a letter written to the governor of Nebraska by a lawyer:

> This provision has deprived Douglas county of from 7,000 to 10,000 dollars a year in license and marriage fees. It has accomplished no useful purpose whatsoever, but has proved an added burden to the taxpayer and an obstacle to the parson, the jeweler, the hotel owner, amusement men, furniture dealer, and every other business man in our large cities.

Here was failure due to several causes: (1) to a new advance notice law that substituted a ten-day period of advance notice for no notice whatever; (2) to a campaign that failed properly to estimate the political influence of certain commercial interests and did not rally a large enough following on the other side; (3) to neglect of any opportunities to win the aid of like-minded citizens in adjoining states. For immediately after a state adopts a higher standard of marriage administration, the desire of an ad-

joining state to profit financially thereby and encourage non-residents to marry within its borders instead, has been illustrated again and again.[1]

One possible obstacle to the enforcement of advance notice is found in failure to adapt a newly enacted advance notice law to the excellent requirement now in force in 7 states which stipulates that both candidates must appear personally before the license issuer. This provision should be kept in the marriage law, of course, but it is a mistake to require candidates to appear twice—not only at the time of original application, that is, but also when the license is issued after the required interval. Ordinarily both candidates should be required to appear in person at the time of the original application. Then, after the required interval, the license might be called for, or sent for, or mailed to one of the candidates as is now the practice in a few offices. Where one candidate is a non-resident of the state his or her appearance in person at any time before the issuance of the license should be sufficient. But when both candidates are non-residents of the state both should make application in person.

Account must be taken also, in any state campaign, of the selfish interests involved nearer home. In some campaigns justices of the peace have actively opposed necessary changes. In one state the lobby of the justices at the state capitol has been notorious;

[1] For a discussion of these interstate relations, see Chapter IX, Evasive Out-of-State Marriages, pp. 187–213.

repeatedly it has been successful in defeating better marriage laws. In at least one other state, the state association of license issuers opposed reform for no better reason than that it might reduce their fees in counties near the border. The fee system of payment to marriage license issuers is still, wherever it obtains, an almost insuperable bar to good administration.

To enumerate these difficulties and to urge all who are interested in a better relation of the state to marriage to reckon with them is not to take a gloomy view of the future. It may be well to avoid overconfidence, but our own experience with the publicity given to the question of child marriages during the last few years has convinced us that any subject of this nature has only to be presented fairly and with a clear analysis of the facts to bring many influential friends to its support.

PART II

SOME SOCIAL ASPECTS OF MARRIAGE

CHAPTER VI

YOUTHFUL AND CHILD MARRIAGES

UPON the subject of youthful and child marriages, we have already published a small book.[1] At every turn in the course of our investigation, 4 social aspects of its main theme have thrust themselves upon our attention. These 4 aspects of our general subject are immaturity in mating, undue haste in the marriage of adults, clandestinity, and law evasion. Taking the country as a whole, the first aspect, immaturity in mating, proved a far greater evil than we had realized before field work was begun, and it was for this reason that our material on child marriages was made public in advance of this present volume. Since Child Marriages was published, additional evidence has come to hand even without further search. The present chapter, therefore, supplements to some extent our earlier findings. Discussion was confined then and will be now to the marriage of very young girls. Few boys marry in their early teens. As in the other volume, the marriage of a girl between 16 and 18 is described as a youthful marriage, and that of a girl under 16 as a child marriage.

[1] Child Marriages, 1925.

When, in the attempt to make a careful estimate of the size of this problem, we turned to censuses and life tables, we found that there were at the very least two-thirds of a million people living in the United States today who had participated in a child marriage as one or the other of its two principals. That is, the bride had been under 16 years old when the marriage was performed. Our estimate was made on this basis because the effects of child marriage do not cease with childhood. Both physically and socially the marriage relation can be permanently influenced by immature mating. Neither husband nor wife may ever know in such an alliance the meaning of genuine comradeship in marriage. Both are involved, therefore, and in enumerating those affected we counted both. But when our figures of participants in such marriages were published a few periodicals and dailies shot far beyond the mark by reporting that there were two-thirds of a million child brides in the United States at that moment,[1] while others went to the opposite extreme and assumed that, whether now living or not, there had been only one-third of a million girls who had married under the age of 16 in this country during the last 36 years.

Another misunderstanding for which no statement

[1] Following the lead of these periodicals, perhaps, Popenoe in his Conservation of the Family (page 28) credits us incorrectly with the estimate that there are "in the United States at the present time more than 600,000 husbands or wives less than 16 years old," and draws from that estimate the inference that, because of the great prevalence of child marriages in this country, it would be unwise to hasten any change in the present minimum ages.

of ours was responsible was the assumption of one or two reviewers that child marriage is a custom "confined to that twilight stratum of the population bordering on defectiveness and delinquency." We have not found this to be true. It is difficult, indeed, to understand how any parents, well-to-do or poor, who read the daily papers can feel that their own adolescent girls are wholly safe under this country's present system of marriage license issuance to minors. Adolescents often do erratic things; and any age can be sworn to at the license office on the suggestion of designing or of scatter-brained companions. In many such cases the issuer seems to feel himself without authority to withhold a license; he hands one over the counter and the marriage is celebrated the same day. The extent of this evil is often increased by the existence across the state border of a marriage market town similar to those already described.

One of our office files contains under date of October 3, 1925, an illustrated newspaper clipping containing a plea in favor of early marriages. Across the width of the page are reproduced the pictures of 4 young heiresses who, in their teens, had eloped from homes that were far above the "twilight stratum." According to the article, all of these marriages had turned out happily and all seemed refutations of the conclusions we had published a few months before. But attached in the file to this same clipping is one from another newspaper dated November 8, 1925,

only a month and 5 days later than the first one. The second news story states that one of these 4 happy young wives (reproducing her picture again) had just filed suit for divorce. Her elopement had been to a marriage market town. The divorce applied for has been granted.

More convincing than any newspaper account, however, is the evidence of the law reports, especially when decisions there reported review the details quite fully, as in the case about to be summarized of an application for the annulment of a child marriage a few years ago in New York State. Since the decision annulling this particular marriage was made, the New York marriage law has been amended to require proof of age at the license office from all candidates who appear to be under 21.[1] Such proof should protect from exploitation other families, as honest and as law-abiding as the two here victimized.

On December 12 a high school girl of 15 in a college town met for the first time a junior in the college who had just attained his majority. (There is no need to give the names of these two here, though they appear in the law report, of course.) On December 15, only three days later, they procured a marriage license by swearing falsely that the girl was 18 and was therefore free from the necessity of procuring parental consent. Leaving the city clerk's office with their license, they applied at once to a priest (the girl was a Catholic), but very properly he refused to marry them. In some way, perhaps through this priest, the child's mother received news of the attempted marriage. Before she could find her daughter, however, a justice of the peace had

[1] See p. 143 of this chapter.

united the pair. The bridegroom then took his bride to a hotel where they spent two days and two nights, at the end of which time he abandoned her and never lived with her again.

The relatives of both these young people were responsible and kindly. They did all they could to meet the situation created by a most inadequate law that had been inadequately administered. The bride returned to her own home, and there a child was born in due time which was adopted by the young mother's parents. Later, court proceedings were instituted for annulment of the marriage. The judge in his decision commented upon the unhappy circumstances of the case and added, "The occasion exists for further legislation to protect our boys and girls, . . . their parents, and society itself from the consequences of hasty, ill-advised, runaway, or trial marriages. . . . Added safeguarding restrictions upon the issuance of a marriage license should be set up."

We shall have occasion to refer again to the helplessness of careful parents under circumstances such as those given above. No one social group is wholly responsible for the marriages now contracted too early. "Added safeguards" are indeed needed to prevent such unions.

Advance publication of the child marriage material also brought a number of letters expressing interest in the general subject and asking what the writers of the letters could do in their home states to bring about needed reforms in both law and procedure. A few correspondents protested, however, that since early marriages had been successful in the days of our forefathers, why not now? To these we could only reply that, against marriages now termed "early" to distinguish them from late, we hold no

brief. Even about the marriage of girls between 11 and 15 we have not been willing to dogmatize. Evidence against such unions has been forced upon our attention in the course of an inquiry undertaken for quite other reasons. It was true that frontier conditions in America had favored child marriages and that our forefathers married in the seventeenth and eighteenth centuries earlier than we do. But in modern times are we not expected to prepare ourselves for the varied demands of a life that is far less simple than formerly? The "prolongation of infancy," as Fiske phrases it, is one of the ways of making better use of our longer life-span through a better preparation for life. We further suggested that one interesting inquiry not yet undertaken would be a search of America's early domestic records to discover how many of the widowers of that day had buried, let us say, 3 wives apiece, and how many of these wives had married at a very early age.

I. THE MINIMUM MARRIAGEABLE AGE

Considerable space was devoted in Child Marriages to brief statements of the circumstances surrounding 240 marriages that involved 250 different children. During the year following publication of these case notes no further search was made, but the details of 69 more cases from 18 states had accumulated in our files. With a view to seeing how these compared in characteristics with the earlier group of 240, we took pains to verify the circumstances of the 69 cases

also. In 9 of the 69, the marriage had been prevented. For the remaining 60, the ages of the girls concerned were as follows:

4 were 11 years old at marriage
3 were 12 years old at marriage
14 were 13 years old at marriage
17 were 14 years old at marriage
22 were 15 years old at marriage

60 were under 16 years old at marriage

This shows an even larger proportion of child marriages under the age of 14 (21 out of 60) than in the group published earlier.

In other relations than that of marriage, how does state law regard girls of 11, 12, 13, and those even older? In 14 states a girl can marry earlier than the age at which she is permitted to leave school and become a wage-earner, and in most of the states after marriage she is excused from school and the compulsory education law is not enforced. By common law, however, she is presumed between the ages of 7 and 14 to be incapable of committing a crime. Between those ages the burden of proof is upon the prosecution in every case to show that the child intended to do the act complained of with a knowledge of consequences. One who negotiates a business contract with a girl still a minor does so at his peril, for not until she has achieved her majority can she make contracts that bind her legally. But the most important contract of all—the marriage contract—is

still an exception. Too many states still empower her while a young child to found a new family and undertake the bearing and rearing of its future citizens. Every now and then civilization has to go back and, with no small degree of exertion, pick up some precious package that, in the haste and eagerness of its advance, it has dropped by the wayside. Such a package is the protection of childhood from premature marriage.

By the term "minimum marriageable age," as used here and elsewhere in this book, is meant the minimum age at which marriage licenses may be issued legally, if the parents consent, without waiting for a special order from the judge of a designated court. There are indications that in time our cultural standards will raise this minimum age to 18 for young girls, though we are not ready for this higher standard now and may not be for a long time to come. When 18 becomes the usual minimum, then 16 will probably be established as an absolute minimum with no exceptions allowed by court order below that age.

On the biological side, the argument against very early marriages—certainly against marriage under 16 and probably, though not so conclusively, against marriage for girls under 18—cannot be developed here. It is given in some detail in our earlier book.[1] Dr. Walter B. Cannon's important statement to us, as quoted there, calls attention to the fact that there are wide individual variations in age among girls at

[1] Child Marriages, pp. 24–29.

puberty and that beyond puberty child bearing is possible. Biologically speaking, however, marriage and parenthood are not advantageous until the bodily frame has had time to store up a reserve of vigor not attainable during rapid growth. This points to 16 as the lowest age standard that should be fixed by law as the minimum marriageable age for girls.

The basis in science for a difference of two years, long established by common law and now carried over into most state marriage laws, between the minimum marriageable age for girls and that for boys is found in the physiological fact that, between the ages of 7 and 17 at least, there is clearly a marked difference in rate of physical development of about two years in favor of the girls. This is generally held among scientists, though the extreme feminists who have been doing their best to equalize the legal status of both sexes seem unaware of it. Certain of them recently found on the statute book of one state the old common law minimum of 12 for girls and 14 for boys, and at once proposed, though without success, that the statute be amended to 14 for *both* sexes. Here a physiological law, confronted by a political philosophy, found itself temporarily in jeopardy.

It will be seen from the tabular presentation in Appendix B that, while over a third of all the states have now adopted the 16 year minimum age for the marriage of girls, a fourth of all the states still lag far behind. Either by statute, by judicial decision

under common law, or by common law without such decision, they cling to the old marriageable minimum of 12 for girls and 14 for boys.

Where did these low minima originate? They have come down to us from the pagan Rome of nearly two thousand years ago. To the Roman mind, materialistic in its logic, the ages at which boys and girls achieved puberty in that climate were regarded as the proper minima. These same provisions as to the marriageable ages were taken over later, after Rome had been Christianized, into ecclesiastical law, and the ecclesiastical canons carried them later still to England, whence they came to this country by way of English common law in the days of our earliest settlements. "It is forcing an open door," writes an anonymous contributor to one of the English reviews, "to lay stress on the manifest absurdity of a northern race following Roman law in this servile and ignorant fashion."[1]

As a matter of fact some of the southern countries of Europe now have higher minima—Italy has, for example. And of late years, following a complete revision of its canon law, the Catholic Church has substituted 14 for girls and 16 for boys as the minimum below which marriages must not be solemnized. That church legislates for Catholic Christendom in many parts of the world, with many different climates and varying cultures to take into account; it there-

[1] Ignotus on "Demoralization of the Law" in *Westminster Review*, Vol. 171, April, 1909, p. 409.

fore legislates conservatively. The Codex adds, however, that though marriage above these newly established ages be valid, "it is the duty of the shepherds of souls to dissuade from marriage all young people who have not reached the age at which marriage is usually contracted according to the prevailing local customs."[1]

A list was published in Child Marriages in 1925 of the minimum marriageable ages established by law in each state. A Tennessee correspondent, seeing in our book that her state was included in this list among those still having a 12 and 14 year minimum for girls and boys respectively, wrote in protest, assuring us that these ages had been raised to 18 by statute. After an exchange of several letters, it became apparent that the law referred to by this correspondent related to something else; namely, to the age of consent to carnal intercourse. The age of consent for marriage is not derived from this provision of the criminal code at all; it has a different origin. The minimum marriageable age of common law has never been lower than 12, while English law at one time fixed the age of consent to intercourse as low as 10. Our readers had been warned in the earlier book that "age of consent" was a confusing term, since that phrase was in common use to describe 3 distinct things—the age below which a female

[1] Petrovits, Rev. Joseph J. C., I.C.D., S.T.D.: The New Church Law on Matrimony. John Joseph McVey, Philadelphia, 1926, Second Edition, p. 144.

child is presumed to be unable to consent to sexual intercourse, the age below which marriage is illegal even with parental consent, and the age at and above which parental consent for marriage is unnecessary. Legislation bearing upon one of these 3 things does not affect either of the others. The marriage law of every state should be more specific, however, than are the laws of most states at present; it should name the minimum ages for marriage license issuance, and should depend in a matter of such vital importance upon neither common law nor judicial decision. Marriage below the fixed ages, moreover, whether with or without parental consent, should be expressly forbidden save where judicial consent is granted in special instances. And it would save confusion to avoid the phrase "age of consent" in discussing these marriage requirements; it is a misleading term.[1]

II. THE CONSENT OF PARENTS

Parental control over the choice of a mate was formerly supreme. At one time it extended from birth, or even before birth in those parts of the world that had the practice of prenatal betrothal, to far beyond the age of majority. It will be seen in Appendix B that the states still having a very low marriageable minimum age usually require parental consent for children who marry between the ages of 12 and 18 or 21 in the case of girls, and between 14 and 21 in the case of boys. But in states with a 16

[1] Child Marriages, p. 54.

year minimum for girls and an 18 for boys, parental control unsupplemented by a court order is limited usually to the ages of 16 to 18 and 18 to 21 for the two sexes respectively. Between these ages such consent still serves a very useful purpose, and we should be sorry to see it abolished altogether, as some students of marriage customs have advocated.[1]

A member of one of our state legislatures who was opposing the passage of a bill to raise the minimum marriageable age for girls from 12 to 16 is reported to have said that 95 per cent of parents who consented to the marriage of their daughters under 16 could be trusted to decide wisely. When all parents are taken into consideration and not just those who consent to the marriage of mere children, there can be no doubt that most of them do earnestly desire to promote the welfare of their sons and daughters, and that at least a majority of parents are better able to judge what is best for these young people than anyone else now available. But we find that a number of the parents who consent to the marriage of their children consent perforce *after* the marriage, and that a number of those who consent beforehand yield to undue pressure from persons who have a selfish interest to serve.[2]

Then there is a larger number of parents than is generally realized who are themselves woefully igno-

[1] *Ibid.*, p. 91.

[2] We shall have more to say about this when forced marriages are discussed. See Chapter VII, Hasty Marriages, pp. 155–162.

rant or indifferent. A generation ago America faced and first attempted to deal with the ignorance and indifference of a minority of parents who were willing to wreck the health and stunt the mental development of their children by premature wage-earning. Now we face a minority who would marry their children off prematurely. It is true that parental rights are not lightly to be set aside, but the possession of rights presupposes the faithful discharge of duties. To a woman whose youth has been wrecked by parental ignorance there is small comfort in the reflection that the state refrained from interfering on the ground that a majority of all parents were able to do better by their children than hers had done.

In our 1925 study of the circumstances surrounding 240 child marriages it was found that 109 out of 188 in which this fact could be ascertained had been licensed to marry with parental consent. Often the outcome of these marriages with consent of the parents could not be discovered, or there had been no definite outcome as yet, but it was possible to give well authenticated details about the outcome in 36 of the 109[1]. During the year following publication, as already noted, 60 more child marriage cases came to our attention. Parents gave their consent in 33 of the 60. Pre-matrimonial pregnancy is usually supposed to be the one compelling reason for parental consent, but in only 4 of the 23 cases of parental consent in which (out of 33 in all) we were able to get

[1] *Ibid.*, pp. 95–101.

any satisfactory evidence on this point, was it alleged to have been the reason.

The following brief notes will give first, some idea of the varying circumstances surrounding these more recent cases of child marriage with parental consent, and second, some indication of their outcome when the outcome is known.

First, as regards circumstances:

A father reported at a license office that his girl of 11 was almost 16. He was granted a marriage license without her appearance there, and she was married immediately to a man of 40. It transpired a little later that the child was a ward of the state and had been spirited away from an institution for children by her mother.

When a certain judge had been asked to grant an order authorizing the marriage of a girl of 13, he consulted specialists who reported to him that the child was feeble-minded, unable to manage a household, and unfit to bear children. After a careful hearing, this judge denied the petition. With the consent of her parents, however, the child was taken to another state and there married to a man of 33.

A mother who had received notice that her child of 14 must attend school, arranged a marriage for her instead, giving the girl's age at the license office as 17.

A girl of 14 was found to have been working illegally. Suddenly she too became 17, or so her mother claimed when application was made at a marriage license office, and her license was issued.

After an issuer in one town had refused a license to a divorced man, another town granted it, thus enabling him to marry a child aged 12 years and 14 days. Both of the child's parents gave their consent.

A widower of 52 whose wife had recently died married their adopted daughter of 15 after renouncing the adoption.

One license issuer reports that the father of a girl first claimed that she was 13, then returned later to the office and said she was 14. In answer to a question, her parents denied that she was pregnant but felt that here was a good chance for their child to get married. She did not look over 11 years old, and a license was refused. The parents then took her across the state line and married her off in the adjoining state.

A husband and wife who had been living apart for some time were found to be co-operating quite heartily in effecting the marriage of their 15 year old daughter to a man who had a good deal of money and was three or four times her age.

Second, as regards outcome:

A girl of 13 married with her mother's consent. When her baby was born it weighed only two pounds and soon died. Her husband has left her.

A child aged 11 years and one day was married at a marriage market town in Indiana. The clerk of court there claims to have on file the written consents of her parents to the marriage. These were sworn to before a Chicago notary. In less than one month the marriage was annulled.

A girl of 13 who was married with parental consent to a man twice her age is now reported by a social agency to be a physical wreck.

One mother married off her daughter of 15—a girl in wretched health at the time—to a man much older. He is now going with other women.

A stepmother had treated her stepchild as a drudge and finally, much against the child's will, arranged a marriage for her when she was 14. The girl appealed later at the police station for protection. She was placed in an institution and the marriage was annulled.

A girl of 15, rescued from the control of a procuress, was committed by the court to an institution. But her parents obtained her release and married her to a young man who proved to be badly diseased. Application has been made for the annulment of the marriage.

The judge of a children's court decided that a 15-year-old girl, who had been married unwillingly, as she claimed, but with the consent and urging of her parents, was "incapable of assuming the responsibilities of a housewife and in need of strict discipline and care." He committed her to an institution. The husband had been the one who brought complaint in this case.

The marriage of a man of 25 to a girl of 13 was arranged by the girl's mother, who gave her child's age as 16 at the license office. The girl now declares that she never wants to see her husband again.

Parents married their child of 15—unwillingly on her part—to a man who proved to be an epileptic. She left him at the end of 4 weeks.

A children's court judge reports a case of rape in which the man was 21 and the girl 14. The child had been living with her grandmother, and it was with the grandmother's consent that later a marriage was arranged. The girl was not pregnant. The judge states that in all probability this marriage will be annulled.

Another judge reports that, when a girl of 14 was brought into court on a delinquency charge, it was found she had a husband and that he was serving a term in jail for grand larceny. It also came out that, with the consent of the girl's parents, these two had been married two years before, when the child was only 12.

In the following case, marriage was prevented by officers of the law:

A father of a 13-year-old girl and her prospective bridegroom, aged 49, were both given 30 days in jail, the one for attempting to buy a bride and the other for attempting to sell his child. The price that had been fixed was $100.

No one claims that a majority of parents are like those that are described above, or that a majority of all our children are exposed to equally grave danger of exploitation. But on the other hand, those students of social conditions who have been paying close attention to the applications at marriage license offices and to the problems coming to children's courts, who know, moreover, the details of serious offenses brought to our criminal courts and are familiar with the appeals for annulment made to still other jurisdictions, question seriously whether it would not be far better, in this matter of immature unions, to establish in every state a reasonable minimum below which marriages can be sanctioned only after careful review of the circumstances by a designated court, and to hold the license-issuing officers to strict observance of the established minimum.

We have stressed the point before that, under the present system, even the conscientious parent is not fully protected. This is further illustrated in a case reported in 1926 by the Women's Protective Association of Cleveland in a study of school-girl brides, a study to which we shall have occasion to refer again a little later.[1]

A 14-year-old girl, the daughter of a professional man of high standing in the community, was in the habit of buying candy at a confectionery near her school. The proprietor, a somewhat abnormal man of 30, induced the child to marry him upon his

[1] Marshall, Sabina: School-girl Brides, A Study by the Women's Protective Association. Cleveland, 1926.

promise that she need not live with him until she was 18. The parents were informed of the marriage by friends who learned of it through the license notices in the daily paper. The child had known the man very slightly before the marriage took place and she was unable to explain why she had consented to it. To prosecute the girl would have been absurd, to prosecute the man was manifestly impracticable, since the efforts of the parents were directed wholly to protecting the girl from the disagreeable publicity which prosecution would entail. The parents were unable to prevent the marriage since they knew nothing of the man or of his intentions beforehand. The license office could have prevented it by requiring the girl to prove that she was over the minimum statutory age. After the ceremony, perjury proceedings were useless. By accident a social worker of the Women's Protective Association met the distraught parents on the news of the marriage and advised annulment proceedings.[1]

III. AVAILABLE PROOFS OF AGE

"I should be glad," said a legislator who was opposing reforms in the age provisions of his own state's marriage law," if you would tell me how a license issuer could know whether a girl was 14 years and a day old or only 13 years, 11 months, and 28 days old." The answer is simple. Applicants for marriage licenses should themselves be required to produce the evidence. Is it not strange that, if a young girl is going to Europe and applies for a passport, she must present an attested transcript of her birth certificate or other evidence equally good before she can receive one, but that for the far more serious step of marriage her affidavit alone, or more often the

[1] *Ibid.*, p. 42.

affidavit of the man who wishes to marry her, is all-sufficient?

This question of proof of age has been worked out in effective detail in the administration of our child labor laws. Where a transcript of the birth record is not procurable or where there is no such record, baptismal certificates or passport records may, under these laws, be substituted, and 16 forms of secondary evidence relating to age, arranged in the order of their relative values, are listed in our earlier study.[1]

Even now some of these forms of evidence are substituted in many departments of administration for the affidavit of an interested witness. Thus, the Commissioner of Motor Vehicles in New York writes that the procedure throughout the state for issuance of junior operator's licenses (limited to operators between the ages of 16 and 18) is to require each applicant to file a birth, baptismal, or school certificate attesting the fact of age.

A marriage license blank in use in Arizona states in the instructions printed on its reverse:

> Both parties must prove their ages beyond any doubt when required by the Clerk. This may be done by any one of the following methods: Furnishing birth certificate made by duly authorized State or County officer; a registration certificate that party is a qualified voter; a certificate from a parish priest, or a duly authorized clerk or officer who is the custodian of the records of any church that keeps a record of its members, showing the date of birth of the party; a statement in writing, signed by both parents or guardian and witnessed, as to the age of the party in question.

[1] Child Marriages, p. 132.

For reasons already made clear, the alternative at the end of these instructions is not always a satisfactory one. We have seen that parents sometimes misstate the ages of their children in such documents.

Since the earlier study was published, a convention of license issuers in New York State has passed resolutions placing its members on record in favor of raising the legal minimum age in that state to 16 years; the children's court judges of the state have taken similar action; and a Bronx County, New York, Grand Jury went on record in 1925 as advising "the adoption of a uniform rule requiring certain prescribed proofs [of age] from all persons who in the judgment of the license authorities seem to be less than 18 years old." This proof, as already noted, is now required in New York State for all who seem to be less than 21. Since in New York parental consent for girls must be given up to the age of 18, this required proof of age up to the higher age of 21 is very important. If proof were to be demanded only for those who seem less than 18 years old, well-developed girls of 17 who allege themselves to be 18 in order to marry without their parents' consent might readily be accepted as of that age, and so be exempt from the proof of age requirement. Where parental consent is required up to 18 for female candidates and to 21 for male candidates, as is usual, proof of age should be required up to the ages of 21 and 23 for the two sexes respectively.

In the habit of substituting for genuine proof the

affidavits of interested young people and those of others far from disinterested, a question is involved which is even more serious than that of child marriage. This is the question of perjury. What preparation for citizenship are we giving our young people to permit this light-hearted oath-taking to continue unchecked, when administrative processes ought to be shaped at this point—at every other for that matter where it is at all possible—with special reference to making perjury difficult and truth-telling easy? The punishment of perjury is acknowledged to be an uncertain and complicated legal procedure, but in substituting genuine proof for oath-taking we have a much simpler and juster way of preventing perjury, in license offices at least, which throws no great burden upon any issuer who has once learned the various types of evidence that can reasonably be required of candidates.

In the Cleveland study of school-girl brides already quoted there were found to have been during the months covered 505 marriage licenses issued to girls who were actually between the ages of 14 and 18 years inclusive. These girls, if under the minimum age of 16, had one reason for evasion; if under the age of 18, below which age parental consent was then required, they had another reason. To see how many succeeded in evading the law, the ages of the whole number were verified through search of vital statistics, passports, school records, social agency records, and so on. The result of this search proved

that 184, or 36.4 per cent of the 505, were found to have sworn either falsely or mistakenly about a matter already on record. Of 148 girls who claimed to be 18, for example, 6 were 14; 16 were 15; 41 were 16; 85 were 17.[1] There is no reason to believe that the Cleveland license office has been imposed upon any oftener than most other license offices. The care with which the Cleveland study was made furnishes proof of a condition of affairs as regards the wholesale production of false affidavits of which, earlier, we had had only indirect evidence.

To sum up these various considerations in a short paragraph: Further evidence on the biological side of this interesting subject of immaturity in mating is still necessary. In its social results today it concerns more than two-thirds of a million living Americans, and this estimate does not include their offspring. If our case studies are at all representative, over one-half of these one-third of a million marriages had been celebrated with parental consent. The problem of pre-matrimonial pregnancy, however, which is so often given as an argument for a very low marriageable minimum, enters into such immature ventures in only a small minority of instances. But a very important consideration is this, that even without parental consent, minors under 16, girl children, have little difficulty at present in obtaining the sanction of the state to their marriage by the simple expedient of swearing falsely at license offices when asked their

[1] School-girl Brides, p. 17.

ages. Many of these children are too young to have any conception of the nature of an oath. Annulment proceedings, divorces, or separations without court sanction often follow as a matter of course. It is not necessary to wait for further scientific evidence before taking certain obvious measures to remedy this situation, for these measures have already been tested and been proved to be of genuine social value. They are, in a word, to raise by state legislative action the minimum marriageable age for girls to 16 wherever it is now lower, with the power to grant exceptions in individual cases vested in certain designated judicial officers. Nor is it necessary, in most states at least, to wait for even this measure of advance before proceeding at once, by developing a new interest in what happens in license offices, there to demand better evidence of age and better evidence that parental consent has really been granted.

CHAPTER VII

HASTY MARRIAGES

SO FAR as the United States are concerned, it would seem that there can be no reasonable or humane argument favoring child marriage; those who have really considered the facts brought to light upon that particular subject do not differ. But about the hasty marriages contracted by adults sentiment is divided. It is not difficult to find instances of marital unions that have been established and very successfully established after brief acquaintance, or of those contracted after due deliberation that have proved miserably unhappy. At present, moreover, the old romantic notions about love at first sight are re-enforced in some quarters by theories—scientific or pseudo-scientific as one prefers—with regard to the compelling power of very early impressions in deciding once for all the type of partner with whom one can be well mated. According to these new moralists a probationary period of 5 minutes between an engagement and a marriage would be better than one of either 5 months or 5 days.

But our own concern with the subject of hasty marriage is with its administrative features only, with what we have found to be happening, that is,

in marriage license offices or to be recorded in the annulment proceedings of courts. The goodness of the successful marriages that were also hasty cannot very well offset the badness of unhappy ones, unless indeed it can be proved that a delay of 5 days, let us say, could have prevented the good marriages from taking place at all or have transformed them into bad ones.

It is true that engagements can be too long; they can also be too short. A dispassionate examination into what is actually happening reveals that grave misrepresentations, that concealments bordering upon crimes are not uncommon. These are made more possible by haste. Drinking and carousing frequently precede hasty marriage; social lapses not criminal but serious are perpetuated by it; a considerable number of annulments and divorces are traceable to it.

I. CERTAIN CHARACTERISTICS ILLUSTRATED

The relation of undue haste to these varied complications can be made plain by a few examples. First, take the bigamous marriages where, from the point of view of one participant at least, there is every reason for both haste and concealment. Then take such other forms of misrepresentation as concealment from the man or woman one intends to marry of one's race or nationality, or suppression of the fact of a pending indictment for crime, or suppression of the grave handicap of mental disease. Take further the exercise by one such candidate of compulsion

upon the other, and so on. The marriages described in the following brief paragraphs would never have been contracted if there had been even a very short interval before marriage for reflection or investigation by one of the two principals:

A legal aid society in Massachusetts reports to us the marriage of a man who claimed to be a soldier away on leave and due to report back for duty the very next day. He told this tale in order to obtain a waiver of the five-day notice law of that state. He had met the girl for the first time only the day before, but the waiver was granted. After the marriage he lived with her for two weeks and then returned to his wife in New York.

A license issuer tells of the press agent for a circus who, meeting a woman on his travels, applied a few days thereafter at Marriage Market Town No. 3[1] for a license to marry her. But it transpired that she had been in the habit of going through the marriage ceremony many times with different men in order to extract money from them. The day after this particular ceremony her new husband brought suit to obtain a divorce.

A Red Cross Home Service secretary reports the case of a Negro who, posing as a Spaniard, an actor, and the son of a very rich man, induced a young white woman to marry him upon less than 24 hours' acquaintance. In three months she discovered the fraud of which she had been the victim and left her husband.

Another woman who married after an acquaintance of only a few days found later that her husband was under indictment for burglary at the time of the marriage. She soon obtained a divorce.

A judge wrote to us in 1922: "We have had a case recently in which a young girl in a nearby town met and married a man within three hours. He brought her to ————, where it

[1] For a description of this Gretna Green, see Chapter IV, Exploitation, pp. 94–96.

turned out that he was a bootlegger, a gambler, and was reputed to have had two other wives. The girl was only 16, and he immediately began bringing men to her for immoral purposes. . . . She finally refused to submit to one particularly objectionable creature, whereupon her husband gave her a severe beating, and then the case was brought to our attention. In the meantime he has disappeared and I regret to say that we have been unable to locate him thus far."

The clerk of a superior court reports annulment proceedings in which a husband had petitioned the court on the ground that he had married his wife after being in her company only a little while during the 3 days that elapsed between their first meeting and their marriage. She had seemed peculiar before the marriage but he had attributed this to nervousness. Almost immediately after the ceremony, it became apparent that she was insane, and upon complaint of her own relatives she was committed to a hospital for the insane. The annulment has been granted.

In one of our large cities, as shown by court decree, a man invited a girl of 17 to take an automobile ride with him, drove her to a marriage market town in an adjoining state, and there threatened to kill her unless she married him at once. Thoroughly intimidated, the girl permitted the marriage to take place but returned immediately thereafter to her parents. The pair never lived together, and an annulment of the marriage was granted 4 months later.

Obviously, one way to reduce the number of court proceedings for annulment or divorce in cases such as the above would be to provide for advance notice of intention before a marriage license could be issued, and to combine with this a greater vigilance on the part of the issuer, a greater reliance too upon documentary evidence other than affidavits.

There are, however, many forms of social laxity

that are not criminal and yet quite as productive of unhappiness as if they were. These include in the following illustrations marriage on the spur of the moment after drinking, marriage on a dare, pre-matrimonial acquaintance by correspondence only, marriage in a fit of pique, and marriage in jest.

A justice of the peace reports the case of a man who went on a journey to a large city in an adjoining state, got intoxicated there, met a young woman on the train going back home, and proposed to her. They left the train at Marriage Market Town No. 4[1] and were married. This man was engaged at the time to another woman whom he really wished to marry. Restored to his normal self he immediately regretted what he had done. At the time that his plight was reported to us, however, he had failed to find a legal way out of the difficulty.

An account of a hasty marriage following close upon the heels of a drinking party appears in the carefully detailed opinion handed down by Judge Stockbridge, of the Court of Appeals of Maryland, in March, 1923. It is unnecessary for our purposes to reproduce here the real names of the contestants—let them stand as Mr. A and Miss B. The appeal had been taken from a decision of the lower court refusing, on a claim of deceit and fraud, to annul the marriage.

To summarize the findings of the higher court, the story is substantially as follows:

Mr. A was a youth of 20 with some education. Miss B had been on the stage since the age of 4, and at the time of the alleged marriage was a 16-year-old member of a theatrical troupe playing in Philadelphia. In January, 1922, Mr. A was introduced to her and to other members of the chorus at the stage door of the theater. Less than two weeks later he joined a few other young men in giving a hotel supper party to several of these girls after

[1] Chapter IV, Exploitation, pp. 96–98.

the performance. There was drinking and the suggestion was made on the spur of the moment that Mr. A and Miss B should be married that night. It was then 1 a. m., and the proper official could not be found in the city of Philadelphia, so more refreshments were sought at another hotel, and some moonshine liquor was procured.

The thermometer registered at or near zero and, though the girls did not join in the drinking, between two and three quarts were purchased and several of the young men were more or less under the influence of liquor. Mr. A claims to have been too drunk to know what happened, but others testified later that Miss B was "exceedingly strong for the marriage," so the whole party got into a large automobile and motored to Wilmington, Delaware, only to be told by the captain of police that they could not be married there unless they had been living in Delaware for at least 96 hours before the marriage. Accordingly the party proceeded to a marriage market town in a third state, arriving about 4 a. m.

The weather had grown so inclement that all sought shelter in a public building, where dice were produced by one of the young women and all hands indulged in a game of craps.

At 7 o'clock in the morning they called on the deputy license issuer of the town who went to his office for the purpose of issuing the marriage license. This issuer did not testify later that Mr. A was drunk at the time but that he "had been drinking." The bridegroom's affidavit to the truth of the required answers to questions was accepted, however, and the license issued. One minister who was applied to refused to officiate, but a local chauffeur helped them to find another without delay who testified later that the "outer condition" of the parties "showed no indication whatever of debauchery or drunkenness," so he pronounced them man and wife before he had had his breakfast.

The lower court denied Mr. A's claim of fraud and accepted Miss B's evidence, apparently, that the marriage had been consummated, though Mr. A contradicted this. The Court of

Appeals, on the contrary, while recognizing that there had been perjury on both sides, decided that Mr. A "was to a large extent stupefied by the liquor that he had drunk. . . . Some things are perfectly clear," the decree continues; "namely, that to constitute a valid marriage under the laws of this state, there must be an understanding and appreciation of what the ceremony was which was being gone through with, and what were the legal consequences naturally deducible therefrom."

A state senator interested in procuring the passage of an advance notice of intention law in his own state vouches for the following story: The young woman concerned, aged 18, declared at a party that she "would not take a dare from anybody." Whereupon her friends dared her to marry a certain young man who was present. This she readily agreed to do, though she knew nothing about him and cared less. They went to the marriage license office the next morning and were married immediately thereafter. Only a day or two later, realizing that she had taken a false step, she appeared in the state senator's law office, seeking an annulment, though, as he claims, with no chance of success.

Even smaller than the acquaintanceship that preceded marriage in these particular cases must be that of the pairs who have known each other by correspondence only until finally they meet just before the marriage ceremony. As already indicated in another connection,[1] there is quite a group of these.

One such marriage is reported by a juvenile protective association. The man in the case had lacked money enough to pay the railway fare of his correspondent, who lived at a great distance. But the necessary money was advanced by an enterprising dance-hall proprietor. He wished to advertise that two people who had

[1] Chapter IV, Exploitation, p. 102.

never met before would appear masked and marry each other before unmasking at his dance hall on a certain date. Fully expecting to be more than reimbursed by increased business, this proprietor advanced $300 for the journey of the prospective bride and agreed to pay $100 more after the wedding, provided the pair fulfilled their share of the contract. When it came time for the license to be issued there was some difficulty in keeping up the game owing to the fact that the license issuer insisted upon seeing the candidates face to face. This difficulty was overcome by having one remain in the background masked, while the other appeared before the official.

As fantastic in its way as the foregoing is the story told by a family welfare society of a woman who, in a moment of pique against the man she really loved, married another. She never lived with her husband, but has lived instead with her lover, though unmarried to him of course. The pair already have three children.

Marriage as the outcome of a jest, and not intended seriously by either the man or the woman concerned, is well illustrated in a West Virginia case decided by the Supreme Court of that state in May, 1922. The decree was handed down by Judge Lively. Here again it seems unnecessary, in summarizing the case briefly, to give the names of the principals. Miss D, a university student aged 19, made the appeal, and Mr. E, a young business man, was in form the defendant.

At a party held at one of the town's hotels it was proposed by one of the young people that there be, just as a joke, a marriage ceremony performed between these two. For some reason the plan was dropped, but soon it became noised abroad that Miss D and Mr. E were to have been married on this occasion in good faith and that mysteriously enough Miss D had backed out at the last minute. Mr. E felt that the business he was just starting in the town would be ruined if this misunderstanding was not cleared up, and the day after the party he persuaded Miss D to marry him with the clear agreement, however, that they would not live

together and that he would procure an annulment as soon as possible. Suit for annulment was instituted forthwith, but was denied at the instance of the divorce commissioner of the state, who felt that the sanctity of the marriage relation would be endangered if understandings such as this one were recognized as constituting valid ground for setting aside a marriage contract.

The Supreme Court of Appeals did not concur in this decision of the lower court, and the plea of annulment was granted on the ground that the parties "never intended to enter into the relation, separated immediately after the ceremony, and never recognized it as binding by subsequent word or act."

"Has anyone," asked George Eliot, "ever pinched into its pilulous smallness the cobweb of pre-matrimonial acquaintanceship?" Here are 13 examples of hasty marriages selected from a much larger number and selected in only one instance with reference to length of acquaintance. In 10, however, this item is known with certainty. In one of the 10 there had been no previous meeting; in 3 the pair had met for the first time only a few hours before; in 2 a day or less was the length of the interval between first meeting and marriage; in the remaining cases the interval had been a few days. Here is haste indeed.

Finally, into a large and ill-assorted group commonly and often inaccurately described as "forced" marriages, the element of haste also enters. This particular subject can receive only incidental treatment here. It has already been included in certain studies on illegitimacy and on the unmarried mother. Unfortunately, the authors of these social studies apply the term "forced" to marriages that, as re-

gards the relation of the principals to each other, are poles apart.

At one pole belong cases of rape, which some courts even at the present day attempt to settle by a marriage ceremony. At the other pole belong those cases of betrothed couples whose national and social backgrounds happen to give a degree of sanction to prematrimonial intercourse. Where pregnancy occurs in these betrothal cases it cannot be said to force a marriage that would have taken place in any event. The people concerned in such marriages have not adopted American standards of sex morality, but often there is no lack of affection between them. Apparently no serious study of forced marriages yet made has limited the use of the term to those marriages in which one or both of the contracting parties enter the marital relation unwillingly and owing to strong pressure from without—from relatives, that is, from court officials, or others. Usually such outside pressure is exerted because the woman or girl is pregnant, or has had sex relations with the man or boy in the case. Not infrequently it is exerted, as already suggested, to save the criminal in a case of rape from a prison sentence. It would be very instructive to discover the relation of forced marriages, when strictly defined, to the number of annulments and divorces granted annually in this country.

One of the best studies of forced marriages, though one which still holds to the omnibus use of the term,

is an analysis made by Mrs. Mudgett, of the University of Minnesota, of family situations in 134 such cases.[1] Fifteen years having elapsed after these marriages, a certain perspective was assured. The case records used as a basis were those of two family welfare societies. This fact influenced the result to some extent in that the group was a selected one, but it assured a more carefully authenticated body of data than is usually available for similar studies. From Mrs. Mudgett's report it appears that in 57 per cent of the families the marital relation had proved unstable (the husband had either deserted or failed to support his family), or else the marriage had been dissolved by court decree. In 53 per cent of the 134 families mental defect and mental disease enter in, "so that there is a grave question as to whether these couples should ever have been permitted to marry at all. For example, one woman whose I. Q. was found to be .60 with a mentality of 9 years and 8 months has had 3 children with intelligence grades of .60, .66, and .67." The only argument for marriage in these cases is, as Mrs. Mudgett says, the inadequate one that "the legal status of marriage . . . makes compulsory support through court procedure somewhat easier. But a complete investigation before marriage would have revealed the fact that many of these individuals should never have been permitted to marry."

[1] Mudgett, Mildred D.: "The Social Effect Upon the Family of Forced Marriage," in *The Family*, Vol. 5, March, 1924.

The eugenic argument against such marriages is stated briefly by Professor Walter as follows:

> Marriage laws may . . . sometimes bring about a deplorable result eugenically, as in the case of forced marriage of sexual offenders in order to legalize the offense and "save the woman's honor." To compel, under the guise of legality, two defective streams of germplasm to combine repeatedly and thereby result in defective offspring just because the unfortunate event happened once illegitimately, is fundamentally a mistake.[1]

Strictly speaking, of course, laws compel nothing of the kind. It is the administration of our marriage laws, or rather the public sentiment behind the administration, that is all-powerful. Sometimes the lawyer who is trying to save his client from a jail sentence exerts pressure upon the parents of the victim. At other times the parents are themselves the compelling force; their child must be "made an honest woman" and their prospective grandchild "must have a name." Only very slowly will this view be replaced by the longer-sighted one which discriminates among the different human situations involved. It is true that more equitable illegitimacy laws will help,[2] but the idea of the marriage ceremony as a cure-all is a deeply-rooted one.[3] To confront one

[1] Walter, Herbert Eugene: Genetics, an Introduction to the Study of Heredity. The Macmillan Co., New York, 1922, p. 251.

[2] The Illegitimacy Act of the Commissioners on Uniform State Laws, approved by that body in 1922, has supplied the basis for laws passed in several states since then. It allows the mother of an illegitimate child to bring civil proceedings for the establishment of her child's paternity and for its support.

[3] Not only marriage as a cure-all, but marriage to the father of the illegitimate child is often insisted upon. A very careful study of 100

set of opinions with another and, as many thoughtful people believe, a more enlightened set, is not enough. We need an impartial and thorough study of the subsequent history of a large number of families that were founded upon forced marriages, using the term in its stricter sense. Then there should be a control investigation of the subsequent histories of a like number of girls and young women in whose cases such marriages were prevented. They are prevented today in only a small minority of instances. Sometimes this is achieved with the help of public officials and sometimes in spite of them.

A school principal in a southern state reports the condition of abject fear into which one of her pupils—a respectable girl—was thrown by the threat that she might be forced to marry a man who had been arrested for the rape of another and less reputable girl. At this man's trial, the judge, learning that the prisoner had been attentive to both, told him that he *must marry one or the other of them.* Whereupon the man offered to marry the respectable girl. With the teacher's backing this was prevented, but the culprit married the girl he had assaulted.

A different type of judge writes to us from Idaho about a rape case that came before him in which the accused was a Greek. Complaint was also filed against the girl for juvenile delinquency, on which she was held. The Greek waived a preliminary hearing, and the judge proceeded to hear the delinquency charge. The attorney for the girl brought in a marriage license.

unmarried mothers and their babies, made recently by Flora E. Burton, of the Massachusetts Department of Public Welfare, covers only such mothers as were under care for two years or more and had kept their babies. Only 2 of these mothers had married the fathers of their children, but 32 had married other men, and 78 of the 100 were leading self-respecting lives.

The only thing lacking was the signature of the County Clerk, that being withheld for the consent of the mother, as the girl was under the age of eighteen. "At a certain point in the proceedings, when the evidence was all in, the girl's attorney stated that the young people desired to be married, and made a long plea as to the desirability of closing this unfortunate case by such a desirable action, and the mother was asked to come forward and sign the consent, the deputy clerk being present, and the justice of the peace standing by to perform the ceremony. I informed them that the girl was a ward of the Court, and on this statement the clerk refused to complete the license, and the girl was formally committed, and taken to the Industrial School that night. The Greek's trial in the District Court comes off in a day or two, and unless something miraculous happens he will be sent up, where he belongs."

A woman judge connected with a children's court reports the following: An effort was made to have a girl of 15 marry a young man of 20 who had been arrested because of his relations with her. The parents of both insisted upon a marriage. The girl sought a private interview with the judge and asked, "Do I have to marry that man?" An examination by a physician was ordered. This indicated that the girl was not pregnant. The marriage was prevented.

A probation officer reports the case of a man of 25 who took a school girl of 15 off in a taxicab one afternoon to another town and lived with her for several days. At the age of 11 this girl had had a mental age of 8 years and 4 months. Her father was said to be threatening the death of the man who abducted her, but when the police were called in and expressed a willingness to drop the charge if a marriage took place, the girl's family agreed to this. The probation officer, however, communicated with the marriage license official and no license was issued. The culprit was sentenced to state's prison, and in the opinion of the probation officer his conviction had had a very salutary effect. No similar offense had come to the court's attention since, though earlier,

when a man had abducted a girl in like fashion, he was known to have counted, if apprehended, upon escaping punishment by means of a marriage ceremony.

It will be seen in these forced marriage cases that the marriage license issuer seems to play a passive part. If he is wanted in court by the lawyer for the defense to issue a license at the psychological moment and give the defendant an easy means of escaping punishment, he or his deputy appears; but if, on the other hand, a girl has friends who are zealous for her welfare, he accepts quite as readily their theory of what should be done. In the groups of cases cited near the beginning of this chapter, the issuer must assume at least a share of the blame for what occurred.[1] In the case of the man who claimed he was a soldier there was a court waiver, but in the case of the circus press agent the license was issued in a marriage market town where the license official and the marrying justice were careless on principle. The intoxicated man who wanted to annul his marriage as soon as he was sober has a reasonable grievance, it would seem, against both issuer and marrying justice in the marriage market town to which he and his chance acquaintance on the railroad train resorted. In the case of Mr. A and Miss B and their party of all-night carousers, it is to the credit of Philadelphia and Wilmington that no official would issue a license to them (in Wilmington it would have been illegal to do so, in fact), but the issuer in a marriage market

[1] See pp. 149–155.

town accommodated them early in the morning, and so did a marrying parson.

One aspect of our subject, the out-of-hour issuance of licenses, has such a direct relation to hasty marriages that reference to it seems appropriate here.

II. OUT-OF-HOUR ISSUANCE

We were able to get definite information on out-of-hour issuance from 57 of the marriage license offices visited. In 13 we found a clear determination on the part of the officials in charge to limit marriage license issuance to the established and announced office hours save in cases of real emergency. In 14 other offices it was asserted or implied that some discrimination was exercised. But in 30 offices licenses appeared to be issued whenever applied for. Issuance after midnight was a possible and in certain places a not unusual thing. Some issuers made a practice of keeping the forms at their homes or at the hotel at which they were living; others insisted in every case upon going to their offices. One stated that he was willing to issue a license out of hours provided the candidates would take him to his office in their car or in a taxicab. In an Oklahoma office, out of 100 records examined, 20 licenses were found to have been issued out of office hours. Several issuers elsewhere reported that Sunday was their "big day," and quite generally we found that licenses issued on Sunday or on other holidays were dated either for-

ward or back, so that there might be no question of their validity.

In Montana, clerks of the district court are the license issuers. These officials are required to keep their offices open for specified hours "and at any other time when business requires it." Probably the law was not framed with marriage licenses in mind, but it tends to encourage out-of-hour issuance. Massachusetts, on the other hand, stipulates that "the clerk or register need not receive notice of intention of marriage on Sunday or a legal holiday nor at any place except his office."

The characteristics of out-of-hour applications as we have observed them in the course of our study suggest that a majority of them are followed by hasty marriages before a civil officiant. In answer to a question as to the increase or decrease in out-of-hour issuance, several license officials in different parts of the country suggested a possible connection between hasty marriage and intemperance when they volunteered the information that there had been fewer applications at night since the prohibition law went into effect. One issuer refuses telephone requests when the voice sounds like that of a drunken man. He refused once to issue a license out of hours to a drunken state senator, who thanked him later for doing so.

It goes without saying that a large part of the demand for this license service at irregular hours is eliminated by an advance notice of intention law.

There do remain, however, a small number of legitimate emergency demands for out-of-hour service. Some resident workers cannot afford to take time off from their work even to be married, or they hesitate to ask for time off for this announced reason in a large shop where there would be embarrassing comment from their shopmates. We found that this difficulty was met in Pittsfield, Massachusetts, by keeping the office open from seven to nine o'clock one evening in the week. A more serious emergency may be caused by illness and danger of death. Thus, in one town visited, the issuer reported a case in which a priest had sent word to him that the prospective groom was dying and wished to be married. This is the type of exception most often noted in the Manhattan office in New York City, where office hours are strictly adhered to and gratuities for special favors are frowned upon. The issuer states:

> Almost without exception no licenses are issued out of office hours. I have an unlisted telephone number at my home. Occasionally a license is issued out of hours upon the request of a clergyman or of a hospital when it is imperative that the marriage take place at once. The Travelers Aid Society may always have a license issued when they so request. They telephone a deputy assigned to this duty who lives on the edge of the city, but to all other inquirers he is out or has gone to bed and will not issue licenses.

CHAPTER VIII

CLANDESTINE MARRIAGES

WE HAVE seen from the examples given in the preceding chapter that hasty marriages are often characterized by complete ignorance on the part of bride or bridegroom of some very essential fact or facts about the partner chosen, and that there can be great thoughtlessness and casualness in contracting a life-partnership that should be anything but casual. It is also true that hasty marriages are sometimes effected with a degree of secrecy or even furtiveness that makes them clandestine marriages as well; for the characteristics of these separate types overlap, and the preventive measures necessary to do away with their worst evils are the same for both. On the other hand, many clandestine marriages are not hasty at all; they are planned well in advance and after thorough mutual acquaintance. If, however, until after the ceremony is over or even later, those naturally entitled to know about a marriage in advance are kept in the dark, then the marriage is a clandestine one.

Just as it has been noted that the motives behind a hasty marriage can range from a jest to a crime, so can the motives behind clandestine unions be equally far apart. For this reason, the subject of the

state's relations to both hasty and clandestine marriages is one of peculiar difficulty, demanding a just balancing of the claims of public welfare against the rights and privileges of the individual.

With the exception of a very few metropolitan dailies, newspapers regard every marriage license issued as news, and long lists of such licenses are published at frequent intervals. A paper read in several counties usually lists not only the licenses to marry granted in its own county, but those granted in nearby counties as well.

As we now know it, such publicity, especially in states without an advance notice law, cannot be said to serve an important social purpose. In earlier times, publication of the banns in church was an effective way of assuring the social control of marriages. It served the double purpose of providing a brief interval for second thought and of notifying those entitled to know. But in the present day of huge parishes and of frequent changes of residence, that ancient custom has become of relatively little effect,[1] while newspaper publication can have even

[1] A Joint Commission of the Protestant Episcopal Church to consider matters relating to matrimony reported as follows at the General Convention of 1916:

"The publication of Banns of Marriage, which some propose to make of universal obligation, would in the judgment of the Commission be of little value in our circumstances. The custom, like that of affixing tax papers and other notices to the church door, belonged to a time when the population of a given district would be generally gathered in one Church, and at a particular service; thus under these conditions the announcement in church of an intended marriage, and the challenge to allege any impediment thereto, would ensure the greatest publicity. This would in no wise be now the result."

less value. In the first place, the larger the town in which the license is issued and published, the greater the need of protection against misrepresentation and fraud, and the smaller the protection that such publication affords. In the second place, publication in places without an advance notice law can come after instead of before the marriage; hence it comes too late.[1] Exposure of illegalities in the contract or of grave social dangers likely to result from a marriage must, to serve a useful purpose, precede its consummation. In the third place, issuers sometimes, and reporters almost always, can be persuaded to suppress in a given instance the fact that a marriage license has been issued.[2] It is true that 8 states require by law that marriage records shall be open to public inspection, but even in these very states suppressions are found to occur. In fact, we know of no state where there is absolute publicity. If, then, publicity were the only or the chief assurance of a check upon illegal and antisocial marriages, it must be recognized that any social control of such unions would be impossible. Before attempting, however, to describe some possible substitutes for publicity, it may be well to make an analysis, similar to that already attempted with hasty marriages, in order to reveal some of the motives behind clandestine unions.

[1] The few examples of marriages prevented by publication given on pp. 113–115 were all in advance notice states.

[2] Estimates of the frequency with which such requests are made of issuers vary from 5 to 10 per cent of all applications in cities of medium size to 90 per cent of all in one marriage market town visited.

I. WHY SECRECY IS DESIRED

In very exceptional cases only do wedded pairs wish to conceal permanently the fact of their marriage. But a number do wish to conceal the *date* permanently, while many more aim to keep secret for only a brief time the fact, the place, and the date. Long continued concealment and permanent concealment of the fact of marriage are so rare that they need not be considered here.

Desire to conceal not the fact but the date of a marriage and to keep this date a secret permanently is traceable usually to one of two causes—either to pre-matrimonial pregnancy or else to cohabitation by a pair who had been regarded as husband and wife before they sought to legalize the relation. Situations like these led, in Michigan, to the enactment of what is known as the Secret Marriage Act. This law provides that a judge of probate shall issue a license without publicity to any female if she makes a statement under oath that she is with child which if born before her marriage will be illegitimate, or that she has lived with a man and has been considered as his wife, or if for other good reason deemed sufficient by the judge she desires to keep the exact date of the marriage a secret to protect the good name of herself and reputation of her family.[1] A separate record of such marriages is made and kept secret, though protection is not so complete as the framers

[1] Section 11,387 of the Compiled Laws of Michigan, 1915, Vol. 3.

of the act intended it to be. Any one who searches the public records later and finds no entry on or about the alleged date of marriage can, if so inclined, make use of this fact. Moreover, according to competent Michigan witnesses the law is subject to considerable abuse. Pregnancy can be and is falsely alleged in order to obtain the state's sanction to secrecy, and, so far as we know, no medical evidence of this claim is demanded. Candidates are permitted, furthermore, to apply to a judge in any part of the state. If they do not succeed in getting a license from the judge in their own county who may have relatively easy access to the facts, they can try in county after county until a judge is found who will issue the special non-publicity license and marry them. Still another objection to the Secret Marriage Act is the fact that in a case of bigamy neither the second wife nor the public prosecutor has access to the secret record unless property rights are involved, though the record might be needed as proof of a second and bigamous union.

As stated, the other important reason for desiring permanent concealment of the date of marriage appears in those cases in which a man and woman had been regarded as married before they applied for a marriage license—often for a long time before. There may possibly be several children, and for their sakes a marriage ceremony is sought.

A social worker reports the case of Mrs. F, a hard-working mother with three children. She had been deserted by her hus-

band no less than five times. After his last desertion and total disappearance, Mrs. F and her children lived with her parents for a while. It was there that a boarder in the household, Mr. G, became interested in her and offered, if she would live with him, to support her and her children. Mrs. F refused and the boarder left the city. But a year later, at a time when she was finding it peculiarly difficult to keep a roof over her head, he returned, renewed his offer, and it was accepted, though with the intention on her part of soon applying for a divorce from the absent Mr. F. Postponement of this action from year to year had at least the excuse of very hard times and of the high cost of divorce proceedings.

In the course of time two children were born to Mr. G and Mrs. F. They realized that their unlegalized union was unfair to themselves and unfair to all the children. Having drifted into it, however, they were at a loss to know what to do. At this point, a social worker first became acquainted with them. She found the two heads of the household affectionate, careful parents, and their humble quarters a real home. It was only gradually that Mrs. F, who was known to every one as Mrs. G, confided to her the real state of affairs. A divorce was procured without difficulty. Then, unbeknown to the children or neighbors, a marriage license was obtained and the pair were privately married.

Soon after, Mr. G took out legal adoption papers for the three F children, making them his own.

A city clerk in New York State has commented upon the license issuer's relation to situations similar to this one as follows:

It is not beyond the realm of possibility that he [the issuer] be called upon to issue a marriage license to a couple highly respected in the community in which they have lived for many years as man and wife. Usually such instances are the result of critical illness, and fear of approaching death makes strong the desire of atonement. . . .

The great bane of an office of this kind are the busybodies, scandal-mongers and gossips. The majority of them employ the telephone in their efforts to procure information. If a call rings true, and one of our covered cases [cases in which publicity has been prevented by the issuer] is not involved, we of course give information cheerfully. If, on the other hand, covered cases are mentioned we politely advise inquirers that it is contrary to the rules of the office to give information over the wire, but if they will call we will be very glad to oblige with any to which they are entitled. . . . On the other hand if [when they come] they fail to satisfy us that they are on the level, we jolly them along with stories . . . till we get them to the door, where we shake hands and ask them to call any time.

The foregoing statement illustrates fairly well the anomalous situation in which a well intentioned license issuer finds himself under present administrative procedures.

Belonging in an entirely different group from those who have reasons for permanent concealment are the bride and bridegroom who wish to keep secret both the fact and the date of their marriage, but only until it has taken place.

Many of these seek to evade parental objections, and age falsification is the means that they adopt to avoid awkward demands by the license issuer for proof of parental consent. License issuers everywhere should be required to demand documentary proof of age wherever there is a possibility that one of the candidates is below majority.[1] It is true, of course, that parents sometimes seek to exert au-

[1] Chapter on Proof of Age in Child Marriages, pp. 117–137, and also Chapter VI, Youthful and Child Marriages, pp. 141–145 in this volume.

thority arbitrarily and beyond the age of majority. A certain number of marriages are clandestine owing to this parental attitude.

Again, to name a different set of circumstances, it happens not infrequently that people of sensitiveness find themselves more or less at the mercy of a social group that still regards a marriage as the occasion for horse-play and coarse joking. To avoid these well-meant but offensive demonstrations they ask to have their marriage license application kept secret or they steal out of town to a place where they are not known and marry quietly.[1] More often than is usually understood we have here the real reason for marrying away from home. This subject of the out-of-town marriage is so closely related to clandestine marriages that it will be discussed in a later section of the present chapter.

Still another reason for stealing away to be married quietly is the fact that, in more than one social milieu, a public wedding is a burdensomely expensive thing. Miss Breckinridge, for example, describes in the following passage the situation that confronts one such social group—that of the Italian immigrants:

> The customs connected with weddings which have grown up in the old country may, when transplanted, mean an expense which seems entirely out of proportion to the family's economic status, especially when American customs are added to those of the native country. An Italian woman says that weddings were, as a

[1] A practice called "belling" is still common in some parts of this country. Friends and neighbors gather outside the home in which a wedding is taking place and ring cowbells, sleigh bells, and so on.

rule, much simpler in Italy than in the United States. There a maid of honor and "other frills," such as automobiles, flowers, and jewelry, were unknown. A large feast, usually of two days' duration, was customary, and is continued here, even in a city. A hall must be rented for the dance, and when food prices are high the cost is enormous. . . .

It is an Italian custom for the father of the bride and the father of the bridegroom to share the expense of the feast, although the bridegroom sometimes pays for the music and the hall, and the bride's family furnish the food. An Italian pastry dealer says that the amount spent for pastries varies from $15 to $120, and an equal amount is spent in home baking. For well-to-do families the expenditures may be much larger; for example, one family recently spent $200 for pastry alone.[1]

Sometimes, though this reason influences fewer people than any yet mentioned, secrecy is desired for a little while because announcement of the wedding might interfere with the occupation of the husband or wife, or with that of both. The bride may be a teacher, though usually women teachers can now retain their positions after marriage. The bridegroom may wish to effect certain business changes before making his marriage known. Then again, he or his bride may be trying to complete professional studies.

A recent death in a family may so change plans for a wedding that the principals will substitute, for the quiet wedding usual under such circumstances, a secret one.

Finally, relatively elderly people who decide to

[1] Breckinridge, Sophonisba P.: New Homes for Old. Harper Bros., New York, 1921, pp. 98–99.

marry may try to avoid gossip and remarks by an out-of-town or an unheralded ceremony.

Here we have, added to the hasty marriages described earlier, a whole series of marital situations requiring greater flexibility in the administrative machinery applied to them than has yet been devised. But before considering modifications that might be made in present day marriage procedures—modifications looking to a socially controlled publicity—it will be necessary to examine our findings with regard to the residential aspects of this subject.

II. THE OUT-OF-TOWN MARRIAGE

Consideration of out-of-town marriages[1] that are also outside the state of residence of both the candidates will involve quite another set of administrative problems, so the out-of-state marriage will be discussed in the next chapter.

In Chapter IV on Exploitation it was shown that a large proportion of all the marriage licenses issued in some places were granted to candidates who resided in another marriage license district and often in another state. This proportion was largest in marriage market towns, though it is quite large in certain other places as well, and we have found wide variations in the cities and towns visited. An exami-

[1] For convenience, the term "out-of-town marriage" as used in this section and elsewhere includes also all "out-of-district" marriages. Both terms refer to marriages for which licenses have been obtained in a marriage license district where neither candidate resides. The town or city is sometimes the license-issuing unit, though more often the county is the unit.

nation of 8,250 license records in 57 offices in 20 states (the number examined in each office ranging from 82 to 598) showed that 32.1 per cent of the total represented licenses granted to candidates both of whom resided outside the given marriage license district. The proportion in 16 marriage market towns ranged from 97 per cent of the whole to 39.9 per cent. At the other extreme were 15 license offices in which the licenses issued to candidates who were both from other license districts never exceeded 9 per cent of the whole, and in 2 of these 15 places there was none at all.

The 15 places with fewest out-of-town applications were in 7 of the states that we visited. In 6 of the 7 there are laws placing residential restrictions upon the issuance of marriage licenses. In 3 of the 7 the license must be issued in the county or license district in which the bride, if a resident of the state, resides. In 2 of the 7 the license must be issued in the county in which either the bride or the bridegroom, if a resident of the state, resides. In one of the 7 no woman resident of another state can receive a license, and, if a resident of the state, her license must be issued where she resides.

Twenty-seven states have no residential restriction upon the issuance of marriage licenses, though the absence of such a provision leaves the door wide open for fraud.[1]

[1] For the names of these states and of those with residential restrictions, see Appendix B, Table 3, p. 370.

An Illinois man tried to prevent the marriage of his 15-year-old daughter by going to 3 county seats and writing to the license issuer at a fourth, to whom he stated his daughter's age and explained his opposition to her marriage. But in a still more distant county she obtained a license by falsifying her age. In less than two years this marriage was annulled.

A place which administers the marriage law carelessly gets a reputation for slackness, with the result that people living elsewhere who have any reason for wishing to evade some one or more of the law's provisions flock there for licenses. Then there are candidates who have learned the kind of evasive answer to give to a test question after making their application at an office at which they had told the truth and been refused. One way of evading a residential requirement, of course, is to go to another state, but this method of evasion will be considered in the next chapter.

Another complication is found in the absence of any legal requirement in our present marriage laws that defines the period of time necessary to establish residence. Usually poor-laws, election laws, and divorce laws are specific upon this point but marriage laws are not. Some license issuers even stretch the residential provision by applying it to future intention; they issue licenses to prospective brides and bridegrooms at the place in which they claim they intend to reside after marriage. Intention is quite beside the mark in this particular connection. Not only is intention a very difficult thing to prove, but

one of the purposes if not the chief purpose of a residential requirement in connection with marriage license issuance should be to relate candidates to their past. In past history only is it possible to discover existing disqualifications, such as whether either candidate is already married, whether there is mental defect or disease, and so on.

Residential requirements as they are administered in a number of states at present are easily evaded, for the statements of candidates as to residence are usually accepted without challenge. In a few license offices, however, we found the present statutory qualifications for residence of some value.

A Pennsylvania issuer sometimes uses, as one means of identification for non-residents, the automobile license of a candidate. He compares the owner's signature, as there given, with his signature written in the license issuer's presence.

A Connecticut issuer who cannot find the name of a candidate in the directory will accept the testimony of some one personally known to him as proof of residence. The issuer notes that non-resident candidates select as their place of residence the name of a street observed on the way to his office from the railroad station. But they are liable to give a number too high or one too low.

A children's court judge in New York State tells of an abduction case tried in his court. The girl was under 16 but looked older. She was taken from her home in Rochester to Buffalo, and application was made at the latter place for a marriage license. Her abductor was careful to give her age as 18, but the license was refused on the ground of non-residence. Profiting by this lesson, the pair proceeded to Niagara Falls, where the man was careful to name that place as the girl's residence in seeking a license. The issuer, however, recognized the street address given

as false, and again a license was refused. Thereupon the girl broke down and told the truth, with the result that she was returned to her home and her companion arrested.

The only remedy that we see for the present defectively administered residential requirements is a combination of the five-day advance notice law so often referred to in these pages with home district issuance of the license (a term to be explained in the next paragraph) and a requirement that each candidate must give the name and address of at least one responsible witness who can testify that the residence given is bona fide.[1] If, during the five-day interval, residences are found to be false, this fact alone constitutes evidence that any court, probably, would sustain if mandamus proceedings were brought against a license issuer for refusing the license. If the five-day interval were adopted more generally, there would be little gained by rushing about from

[1] The legal distinction between *residence* and *domicil*—words that in general use are held to be synonymous—enters into this question. The whole matter cannot be threshed out here, for no definition of either term seems to have been accepted that could apply to all conceivable cases and circumstances. The important thing to bear in mind in connection with marriage is that the qualifications of the candidates are matters of past history rather than of present or future intention, and that license issuers should be in a position to pass upon such qualifications. Our divorce laws make *domicil* at the time of the application for divorce the basis of jurisdiction. *Domicil* is defined by Keezer (A Treatise on the Law of Marriage and Divorce, Bobbs-Merrill Co., 1923) as "the place where a person lives or has his home to which, when absent from it, he intends to return, and from which he has no present purpose to remove." Keezer writes of divorce, but there are court decisions on the qualifications of electors that make *residence* mean exactly the same thing. Whichever term, therefore, will link the candidate for marriage to the past or to the place in which he or she is best known and will do this without making a residential or domiciliary qualification too difficult of proof is the one to use.

one license office to another until a pliant issuer could be found.

There is a residential requirement long in effect in 3 New England states that would seem to be of real value in this connection and also in better accord with modern ideas of the relation of the sexes than are most marriage laws. It has been noted earlier that such laws seldom require the appearance of both candidates before the license issuer. Statements of fact and the necessary affidavits are submitted by the man, and the woman drops out of the picture. By contrast, the Massachusetts, Maine, and Rhode Island provisions upon this point require that, when two candidates reside in different license areas within the state, *each* shall procure a license from the clerk or registrar of the city or town in which the parties respectively dwell.[1] One student of the subject writes, "This seems to me a good law not only administratively but psychologically—it gives the whole matter a new importance, especially in the eyes of the woman." This home issuance plan resembles a requirement long in force in Catholic parishes by which prospective brides and bridegrooms who reside in different parishes must have their banns published in both, unless the banns are omitted by special dispensation. In the same way, a priest celebrating a marriage in a parish other than that of the bride's residence does so only after dispensation granted by

[1] If only one candidate resides within the state, the license must be obtained where that candidate resides.

the ordinary who has jurisdiction over the parish of the bride.

Here, then, we have a reasonable way out of the present out-of-town marriage difficulty, in so far, at least, as this difficulty relates to the issuing of licenses to residents of the state. First, there should be 5 days' advance notice at the residence (or domicil) of both candidates or at the residences of each candidate where these are different. Second, witnesses to the fact of residence should be required. Third, a definition of what constitutes residence for marriage license issuance should be a part of the marriage law, and that definition should be strict enough not only to include a considerable period of past time for establishing residence—6 months at least—but should exclude the elusive variable of future intention.[1]

III. PUBLICITY *VERSUS* VERIFICATION

How can the right of the individual to a reasonable degree of privacy and non-interference—a right that seems to us indisputable—be reconciled with the right of the state to assure itself that certain minimum requirements necessary for both public and individual welfare have been complied with before a marriage can receive the sanction of the state? The situation now is too often a hodge-podge; neither the state nor the individual is protected. The idly curious, the busybodies, the sensation-mongers still

[1] To cover cases of possible hardship specified courts should have the power to grant waivers reducing this period.

have a good chance of annoying people of quieter tastes. Vicious or thoughtless people, on the other hand, are in no sense prevented from marrying hastily by the degree of publicity that is, at present, the state's chief means of safeguarding against fraud those who are about to marry. The remedy, as it seems to us, will be found in rather less publicity of certain kinds than we have at present and in considerably more verification.

As already said repeatedly, where there is no advance notice law, publication of the fact that a license has been applied for and issued is of little effect, for often it shuts the stable door after the horse is stolen. Even where there is such advance notice its greatest single advantage is the chance it gives both candidates for second thought,[1] while its next greatest advantage is the opportunity afforded to representatives of the state to require verification of the assertions made at the time of application. Verification of a type which throws full responsibility upon candidates to produce satisfactory evidence that certain of their statements are true is the state's great safeguard, with just as much giving out of the facts thus ascertained as inquirers and the public can prove their right to and no more.

This may sound like a radical proposal in a country that banks so heavily in its administrative departments upon the affidavit, and trusts so implicitly almost everywhere to publicity to do the rest. A

[1] Chapter V, Advance Notice of Intention to Marry, p. 115.

reasonable regulation of the degree of publicity permitted is shown, however, in the standards already set for certain other public records. The New York City charter, for instance, provides that the board of health "may establish as it deems wise . . . reasonable regulations as to the publicity of any papers, files, reports, records . . . of the department."[1] Under this provision birth records cannot be consulted without "proof of the applicant's right or interest in receiving the record." A similar rule might well be applied to the several records required by marriage laws.

We have seen in the matter of proof of age how little additional burden need be thrown upon public officials, how reasonable it would be to expect the candidates themselves to produce documentary evidence that they are qualified by law to receive the authorization for which they ask. With certain modifications, the same procedure applies not only to age but to such other serious matters as abduction, bigamy, suppression of the fact of a criminal record, drunkenness, and marriage on a dare or a jest. The man or woman who seeks permission to drive an automobile asks to be entrusted with a power in which his or her own welfare and that of others is involved. In the licensing of people entitled to drive cars, no theory of individual rights can check a more and more responsible exercise of state control; for here individual rights, as it happens, are on both

[1] See Section 1175.

sides of the equation. This is true in marriage also; individual rights never stop with one of the human beings or even the two human beings married; others are always involved either at the moment or potentially.

Let us see how the interests of the different groups that now resort to secret marriages would be affected by the changes just suggested.

It is obvious that a public official is more often criticized and more sensitive to criticism when his administrative acts affect residents than when they relate to non-residents. A license issuer will hear again and again of the resident girls under 16 whom he has permitted to marry illegally; he is going to hear more and more about them as the public conscience is aroused and the laws forbidding child marriage are made more effective. But about children brought to him from other places he will hear little or nothing. If he has many out-of-town and out-of-state applicants he will tend, if inclined to be careless at all, to be more careless about these than about applications from residents. Evidence, moreover, will not be so accessible. Nothing else would help so effectively to do away with age falsification in the case of children as a strict residential requirement for license issuance, combined with the demand for documentary proof of age in the case of all candidates who have not obviously attained their majority. Publicity does not enter into the disposition of such cases. Child marriages should not take place and,

in offices requiring advance notice of intention, they are easily prevented.

While criminal practices cannot be wholly prevented by any administrative procedures, no matter how carefully devised, the number of these in connection with the marriage contract could be greatly reduced by the measures here advocated.[1] A criminal is better known where he lives for what he is; and to require him to bring from his own town or county a duly attested license before any one will celebrate his marriage is to throw more effective protections around his victim than any mere publishing of his application can assure.

Marriages when either party is drugged, when either is drunk, on a dare, in jest, when previous acquaintance has been by correspondence only,[2] are all dealt with effectively by the residential requirement, the home license issuance requirement, and the five-day notice, plus a greater exercise of vigilance and discretion on the part of license issuers.

Pregnancy cases might seem to constitute an exception, but most advance notice laws, as we have seen,[3] provide for a waiver of the five-day notice on a court order, and hearings in such cases are not required to be in open court but may be and frequently are conducted privately in chambers. The medical evidence necessary and often the evidence of social workers

[1] For examples see Chapter VII, Hasty Marriages, pp. 148–150.

[2] Chapter VII, Hasty Marriages, pp. 151–155.

[3] Chapter V, Advance Notice of Intention to Marry, p. 116.

already interested can best be had where the woman resides. There need be no publicity and should be none.

The license issuer already quoted[1] who complains of the busybodies could deal with them better if he were required to observe some such administrative ruling as New York's for birth records.[2] Where the community is educated to expect vigilance not from its gossips but from its officials the case of unmarried couples who have lived together but later desire to be married, and the case of the unmarried prospective mother can both be dealt with more individually, more humanely, more privately, and on a safer basis of fact than is now usual.

Those who seek marriage licenses out of town to escape noisy celebrations or expensive weddings, and the elderly people who wish by that means to avoid comment, do so because our lawmakers and administrators have confused two separate functions. A license could be issued without publication where each candidate resides, provided each had been required to submit satisfactory proofs of good faith to the license issuer. Then the marriage could be celebrated anywhere in the state and as privately as the most retiring could wish. This is possible now in all but 12 states and should be possible in all.[3]

In respect of the unthinking attitude of the general public toward this whole subject, there is every reason

[1] See p. 171 of this chapter. [2] See p. 182 of this chapter.
[3] See Chapter XIV, Records and Penalties, p. 299.

to believe that it will change. Even the bell-ringers and the news-gatherers are not indifferent to a changing public sentiment, and signs are not lacking that, in this matter of marriage, the United States intends to show both greater respect for the rights of the individual and greater vigilance in safeguarding the public welfare.

CHAPTER IX

EVASIVE OUT-OF-STATE MARRIAGES

IT IS evident that many persons marry out-of-town in order to avoid unjustifiable interference with their plans, or to escape the fuss and noise of a home wedding; while with others the choice of a distant place is due to old associations that make it seem the appropriate background for the ceremony. When marriages are celebrated in a state other than the home state of either the bride or bridegroom, some one of these reasons or still another equally good may be the explanation. The fact remains, however, that many apply for licenses outside their state for the sole purpose of evading certain provisions of the marriage law in force where they reside. The standards in their home state that are often rendered of no effect in this way are a high parental consent age as contrasted with a lower one; a relatively high minimum age for marriage; a provision for advance notice of intention before the license can be issued; a prescribed interval between divorce and remarriage; and, in a few states, a medical certificate requirement.

The great proportion of non-residents accommodated at some license offices has already been com-

mented upon.[1] In certain marriage market towns a larger business is actually done in marriages of out-of-state applicants than in those of resident and out-of-town applicants combined. Our examination of 7,849 license records in 56 different offices showed that in 16 which were marriage market towns 52.7 per cent of their records were for candidates both of whom resided outside the state of license issuance, while out-of-state candidates in the other 40 offices constituted only 8.4 per cent of the total.

The extent to which the local administrative units of a state are able to profit by additional patronage whenever some neighboring state adopts a better marriage law would present a discouraging aspect of marriage reform if there were no possible remedy. Sometimes a corresponding decrease in the number of marriages celebrated within the state that passed the new measure leads to its repeal,[2] though by vigilance this transition period can usually be tided over.

The evasive features of out-of-state marriages tend to block advances in marriage legislation for which many parts of the country are now ready. Here, then, is a strong argument for some form of interstate co-operation. In so intimate and personal a matter, many still feel that each state should have the right to fix the standards to which its citizens are to adhere. But is it equitable that as regards a number of its citizens the state be practically deprived of that

[1] See the preceding chapter, p. 174.

[2] Chapter V, Advance Notice of Intention to Marry, p. 117.

right by the action of abutting states? The most ardent advocates of state's rights would have to admit that many of our political divisions are now losing a portion of their rights in this way. Before considering suggestions for remedying this evil through interstate co-operation, it becomes necessary to try to understand the public's present attitude toward this whole question by passing in quick review some earlier movements for marriage law reform.

I. EARLIER MOVEMENTS FOR REFORM

Activities in this field began with the organization in 1881 of the New England Divorce Reform League. Its founder, Rev. S. W. Dike, was a man of vision and sincerity. It was at his suggestion that Carroll D. Wright made the governmental study of divorce published in 1889. But Dr. Dike's conservative progressiveness carried him away from the pathology of the subject to emphasis upon the hygiene and therapeutics of marriage. In 1897 his League dropped divorce reform as its major interest to become the National League for the Protection of the Family, and his later reports urge again and again the need for a new sort of study into the fundamental facts of family life, so that we may learn the real causes of failure in marriage behind all statutory causes and may strive to prevent failure. With Dr. Dike's death, however, the League ceased to exist. This body had been thoughtful and open-minded, but it had failed to make any vital contact with clinical material—that

is, with the actual cases out of which studies of family life can be developed.

As far back as 1884 and for various sessions thereafter committees of Congress had considered, but without favorable report, proposals for a constitutional amendment empowering Congress to legislate upon marriage and divorce. Elizabeth Cady Stanton won many reproaches by opposing these suggested measures. She was accused of preaching that the state has nothing to do with either marriage or divorce. What she actually said was this:

> As we are still in the experimental stage on this question, we are not qualified to make a perfect law that would work satisfactorily over so vast an area as our boundaries now embrace. . . . Local self-government more readily permits of experiments on mooted questions which are the outcome of the needs and convictions of the community. The smaller the area over which legislation extends, the more pliable are the laws. By leaving the states free to experiment in their local affairs, we can judge of the working of different laws under varying circumstances, and thus learn their comparative merits. . . . [Otherwise] the whole nation might find itself pledged to a scheme that a few years would prove wholly impracticable.[1]

A National Congress on Uniform Divorce Laws, called by the Governor of Pennsylvania, was held in Philadelphia in 1906, but this led to no proposals looking to federal action. California was the first state, apparently, to memorialize Congress on that subject. In 1911 the California legislature adopted a joint resolution which favored a Constitutional

[1] *The Arena*, April, 1890.

amendment "regulating the subject of marriage and divorce throughout the United States." Representative Edmonds of Pennsylvania introduced a joint resolution to this general effect in the House of Representatives in 1915. Some of the most earnest advocates of federal action, however, feared a lowering of standards in the states that then allowed few statutory causes for divorce; they persuaded Mr. Edmonds to accept an amended form of his original resolution that read as follows:

> Congress shall have power to establish and enforce by appropriate legislation uniform laws as to marriage and divorce; provided that every State may by law exclude, as to its citizens duly domiciled therein, any or all causes for absolute divorce in such laws mentioned.

In this second form the resolution came before Congress in 1917 and was re-introduced by Senator Jones in 1919.

It should be noted that by this and all succeeding proposals state marriage law standards, varying greatly from state to state both then and now, could be hammered down without redress; but not so, at this stage of the proposals at least, with the divorce laws of states that permitted few divorces or none at all. There is an interesting public document of 112 pages that gives the report of a hearing on the above resolution, held before the House Judiciary Committee in October, 1918. The word "marriage" appeared in the resolution under discussion, but it is barely mentioned anywhere in the report of the hear-

ing. At this hearing the Secretary of the International Committee on Marriage and Divorce, with headquarters at Chicago (a committee no longer active, we believe), appeared as leader of the proponents. The Chairman asked him, "Do you believe divorces should be granted for any reason?" He replied, "I hope you will pardon me, Mr. Chairman, for not answering that question. I am not here, I believe, to advocate my own opinions."[1]

Only a little more than a year later (January, 1920) there was a similar hearing before the House Judiciary Committee with another leader. He began by stating that, if he could have the choice of only one of the two subjects for proposed regulation, he would give Congress the power over marriage. But when the Chairman asked him what particular states had the worst marriage laws, he had to acknowledge, "I could not tell you. This book [indicating the Digest of Marriage Laws then recently published by the Russell Sage Foundation] will give you that information. I must say that I have not read it carefully enough to answer your question."

II. THE EVASION ACT

Meanwhile, the annual Conference of Commissioners on Uniform State Laws[2] had turned its attention to marriage legislation. These Commissioners

[1] U. S. Congress, House: Hearings before the Committee on the Judiciary, 65th Congress, 2d Session, on H. J. Res. 187, p. 13.

[2] "The Conference of Commissioners on Uniform State Laws is a body meeting for about a week before the annual meeting of the American

had been first appointed between 1889 and 1892, and the subjects here under discussion soon came up for consideration at their meetings. Thus the presidential address at the Conference of 1903 contained this passage on uniform legislation:

> There is a manifest tendency towards uniformity, not only in this country, but also in Europe. But it seeks to effect this result in different ways. In Europe it is effected through increase of the central power, witness the transference of control over marriage and divorce in 1876 from the several Swiss cantons to the federal government; and more recently the enactment of a code of law for the whole German empire, superseding the local legislation of the several component kingdoms, duchies, and so on.
>
> In the United States the tendency is to secure uniformity, not by transferring power to the national government, but by inducing the several states to legislate alike.

And a year later the president of the Conference said,

> Our marriage laws are worse than our divorce laws; . . . the principal fountain of divorce is bad matrimonial laws and bad marriages, while our apathy, our carelessness and our levity regarding the safeguards of the matrimonial institution are well-nigh incredible.

It was not until 1907 that the committee on marriage and divorce of the Conference was requested

Bar Association. The commissioners are appointed by the governors of the states. Usually from 35 to 40 states are represented at an annual meeting. In some states the action of the Governor in appointing commissioners is voluntary. In others, however, the commissioners are appointed under authority of a statute and a number of the states make appropriations to defray expenses, though all commissioners serve without compensation."—Proceedings of the American Law Institute for 1923, Part I, Vol. I, p. 98.

"to take up actively the consideration of a law regulating marriage and licenses to marry." In 1911 they recommended a Marriage License Act. It has been adopted in substance by only 2 states, Massachusetts and Wisconsin, but 5 others, Connecticut, Georgia, Michigan, Missouri, and California, have accepted some one or more of its main features. In 1912 the Commissioners also recommended a separate Marriage Evasion Act. It should be explained at this point that the act was especially intended to meet the difficulty created by that rule of international law which makes a marriage which is valid under the laws of the country where it is celebrated valid everywhere.[1]

The Marriage Evasion Act of the Commissioners has been adopted in 5 states—Illinois, Louisiana, Massachusetts, Vermont, and Wisconsin. We have been able to observe some of the workings of this law in 3 of these states—Illinois, Massachusetts, and

[1] In a 1910 revision of Burge's Commentaries on Colonial and Foreign Laws Generally and in Their Conflict with Each Other and with the Law of England, there is a good summary of the present status of the international law rule, from which the following brief passage is taken: "The modern view is to distinguish capacity and form as separate factors in the constitution of a valid marriage, for which different governing laws may be recognized. The majority of legislation at the present day has thus definitely accepted the rule that the personal law of the parties intending marriage determines their capacity for entering into the contract; and almost all the States of Continental Europe have undertaken by treaty to observe this principle as regards each other's subjects. The Hague Convention for determining conflicts of law in marriage provides that the right to contract marriage is governed by the national law of each of the spouses unless that law refers expressly to another law, and in order to marry, foreigners must show that they are capable of marrying under the provisions of their national law by producing a certificate from a proper authority (generally a consular authority) to that effect." (Revision by

Wisconsin. The act has 4 sections; Sections 1 and 2 relate to the validity of evasive marriages, Sections 3 and 4 regulate marriage license issuance and solemnization when evasive marriages are attempted.

Section 1. Be it enacted, etc., That if any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state or country and there contract a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state with the same effect as though such prohibited marriage had been entered into in this state.

Section 2. No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction if such marriage would be void if contracted in such other state or jurisdiction and every marriage celebrated in this state in violation of this provision shall be null and void.

Section 1 is designed to deter evaders from *leaving* their home state by making their marriages in other states invalid if they would be invalid at home. This

Renton and Phillimore, Sweet and Maxwell, London, Vol. 3, pp. 246 and 247.)

In the United States, on the contrary, the earlier view, as expressed by Bishop in 1891, is still often upheld by the courts. Bishop said, "By the international law of marriage, which ought to govern the courts in the absence of any statute of their own forbidding, a marriage valid by the law of the country in which it is celebrated, though the parties are but transient persons, though it would be invalid entered into under the same formalities in the place of their domicil, and even though contracted in express evasion of their own law, is good everywhere." (New Commentaries on Marriage, Divorce and Separation. T. H. Flood and Co., Chicago, 1891, Vol. 1, p. 360.)

If, for international law, we were to read interstate relations, the two passages would still present an interesting contrast. The first represents orderly and equitable procedure; the second, as our means of intercommunication increase, leads to chaos.

provision has been ineffectual for the reason that it applies only to marriages which are void under the laws of the home state and so few types of marriage are, in any state, specifically declared to be void. The difficulty is a serious one, since the causes that render a marriage void ab initio should be very few indeed—bigamy and incest almost complete the list. But marriages of other kinds, though not void, are very properly prohibited at present, the contracting parties, or the license issuers, or both being subject to penalties. Such are marriages involving nonage, or physical or mental incapacity, or marriages in which there has been failure to observe an advance notice requirement, a medical certification law, or a parental consent law. If an evasion act is to succeed, all prohibited marriages need to be covered. A declaration that all evasive marriages are void would be very unwise, so there would seem to be no way in which this section could be made effective.

Section 2 is the obverse of *Section 1*. As it too is limited to marriages that would be void in the home state, it is of little or no effect.

The two remaining sections of the Commissioners' Marriage Evasion Act read as follows:

Section 3. Before issuing a license to marry to a person who resides and intends to continue to reside in another state the officer having authority to issue the license shall satisfy himself by requiring affidavits or otherwise that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.

Section 4. Any official issuing a license with knowledge that the parties are thus prohibited from intermarrying and any person authorized to celebrate marriage who shall knowingly celebrate such a marriage shall be guilty of a misdemeanor, and shall be punished by . . .

Section 3 is designed to enable issuers to deter evaders from *entering* the state to be married. It has had some effect, but far less than a measure with better administrative features would have had. At present candidates have only to tell the issuer that they are *not* forbidden to marry in their home state or to make affidavit to that effect, and this usually settles it. The ineffectualness of *Section 3* is also due in part to the fact, already referred to,[1] that no legal standards exist at present in any state as to what constitutes residence for the purpose of obtaining a marriage license. The absence of such a standard renders enforcement of the suggested provision very difficult whenever candidates with no bona fide residence in a state are willing to make affidavit that they are residents. Moreover, this section to be effective where most needed must be adopted by low standard states in which marriage market towns now exist, and these states are sometimes unwilling to deprive their counties or their county officials of the fees that non-resident candidates now pay.

Section 4 merely prescribes penalties.

[1] See preceding chapter, p. 176.

III. IS A FEDERAL LAW THE REMEDY?

Some of the complications just described help to account for the fact that during the legislative sessions of 1921, 1923, and 1925 attempts were made to get this subject before Congress again in the form of an amendment to the Constitution of the United States. A sample marriage and divorce measure, the Capper bill, was introduced in Congress in 1923, together with the following joint resolution to amend the Constitution:

> The Congress shall have power to make laws, which shall be uniform throughout the United States, on marriage and divorce, the legitimation of children, and the care and custody of children affected by annulment of marriage or by divorce.

This latest form of amendment[1] left the strict anti-divorce people far from satisfied, for it contained no qualifying clause that would enable an individual state to *exclude* causes for absolute divorce. The sample bill introduced at the same time as the amendment, specified, in fact, 5 statutory grounds for absolute divorce, and included as one of them abandonment or non-support for a year. By comparing this position with that of the earlier group of federal law advocates, it becomes evident that the proponents of federal regulation of divorce were facing in two opposite directions, and that this left all the

[1] The same amendment and the same bill (with minor changes) were re-introduced December 16, 1925, and again in 1927. The latest form of the amendment, introduced January 13, 1928, leaves power to legislate "concerning the relation between persons of different races" to the states. It abandons uniformity to that extent.

marriage proposals of the Capper bill in considerable jeopardy. Assuming for the moment that the passage of a federal amendment enabling Congress to regulate marriage and divorce is possible, it is certain that the marriage provisions of any bill similar to those of the Capper bill would be treated as a minor matter during the inevitable struggle between advocates who sought to make divorce more difficult and those who sought to make it easier. In any effort to combine legislative changes concerning marriage with those concerning divorce, the major emphasis will be placed upon divorce.

Not only does an examination of the Capper bill reveal the absence of details that are absolutely necessary to the good administration of marriage laws, but it shows also how difficult, if not impossible, it will be to draft a federal measure that will not materially lower the present administration of higher standard states. The particular bill under consideration may never become law, but under a federal amendment empowering Congress to legislate on the subject, an even worse measure might be adopted, so it may not come amiss to state briefly some of the objections to this sample bill in so far as it deals with marriage:

1. It is provided that no licenses shall be issued to those who have specified physical or mental defects. But how are such defects to be identified? No procedure is specified. Then, we are at a loss to understand upon what clearly established social and

scientific grounds the marriage of first cousins is prohibited, though the chief spokesman for the bill has been very emphatic upon this point, declaring that "records of institutions for the deaf and for the feeble-minded show that the great majority of the inmates are the offspring of the marriage of first cousins."[1]

2. It is further provided that candidates, instead of appearing before the issuer, may appear (either separately or together) before specified other officials, including justices of the peace. These officials shall require the same oath as the issuer and forward the application to him, and he, if satisfied that the document is in proper legal form, shall issue the license. As an administrative procedure this is highly objectionable. By dividing responsibility it would cause an even lower drop in standards of license issuance than those described in Part I of this book, and in some states now having relatively good standards it would destroy them.

3. Among other examples of administrative futility are the following:

(a) That provision of the bill which stipulates that the issuer shall post names, residences, and date of application, and that then objections may be filed with the probate court. This means still further division of responsibility, and we need not repeat what has already been said about the efficacy of publication as the only or main reliance against misrepresentation.[2]

(b) Each state may prescribe and furnish model forms but no state supervision or any other type of supervision for license issuance is provided, nor is any follow-up required in case no return is made by the celebrant of the marriage.

(c) An issuer shall be fined who refuses or fails to make the required records of the license and the certificate; who fails to keep the record open for public inspection; or who shall prevent copies from being made. But there are no penalties for failure to

[1] *Current History Magazine*, New York Times, May, 1923.

[2] Chapter VIII, Clandestine Marriages, p. 181.

exercise due caution in the issuance of a license, as now required by the statutes of some of our states.

(d) An interval of at least 10 days is required between application for the marriage license and its issuance, except upon waivers granted by the judge of a court of probate jurisdiction. There are two objections to this: an interval of 10 days is too sudden a change from no interval at all, as shown in the case of Nebraska,[1] while in many states the probate courts are not the best courts to have the power of waiver. Sometimes they are presided over by judges who are not lawyers, and in a number of states their duties are of a purely routine nature.

4. Finally, no license shall be issued to a male under 18 or a female under 16, or to a male 18 to 21 or a female 16 to 18 without parental consent or its equivalent. So far so good, but nothing is said about proof of age, and the valuable administrative experience in other fields, where such evidence has been required, is none of it utilized. In fact, the affidavit, which opens the door wide for perjury, is leaned upon more heavily in this proposed federal measure of the present day than in marriage legislation passed at a much earlier date and now upon the statute books of a number of states.

In the light of the foregoing review of the situation what should be done? Should all of the present interest in marriage law reform be concentrated upon the passage of a federal amendment sanctioning federal control, or should that interest look to the passage of better state laws and to interstate cooperation as a more practicable way out of the tangle? While the present chapter is being written, our two great political parties seem to be competing with each other in their denunciations of federal

[1] See Chapter V, Advance Notice of Intention to Marry, p. 117.

interference with state functions, but before it can be printed there may have been a realignment of parties upon this century-old issue. Political theory aside, what are the practical considerations to be taken into account in so particularly thorny a branch of the general problem of marriage administration as this one of federal versus state control of marriage? Apparently there are plenty of difficulties, no matter which choice is made. To limit consideration of the question to next steps, however, which road should be followed during the next two decades?

When our first Digest of American Marriage Laws was published in 1919, the wide diversity of the state laws was more than ever apparent. That book, in fact, has often been quoted by those in favor of federal control. "After all these years of endeavor and experimentation," they have in effect exclaimed, "look at the diversity—the chaos even—of laws!" One advocate of federal action writes, "Even if 47 states should individually adopt a uniform marriage and divorce law, the forty-eighth might—and probably would—remain the divorce Mecca of the nation, while we could not be certain of any uniformity in the administration of the law. What we need is a federal law, and uniform federal administration of the law."[1]

It is characteristic of those who attempt to combine marriage and divorce reform in one argument that most of their illustrations—certainly their most

[1] Mrs. E. J. Nelson Penfield, from a pamphlet reprint of the original article in the *Ladies' Home Journal* for January, 1921.

telling ones—are drawn from divorce procedure and not from the state's sanction of marriage at all. Nor is it true, of course, that a federal marriage and divorce law would give us uniformity of marriage law administration. Perhaps under the provisions of such a law all cases of divorce might be tried in federal courts, but no one has yet suggested that the more than six thousand marriage license issuers of the country be replaced by federal officials. The only federal regulation of marriage yet proposed by any one, in so far as we have been able to discover, leaves the administration of the law where it now is; namely, in the hands of local administrators who are locally elected or appointed. The Capper bill goes even farther than that; it actually adds to the number of local officials now empowered to interview applicants for licenses by including justices of the peace, who have this power at present in only two states and should not have it in that many.

Mrs. Penfield's statement, however, about the "forty-eighth state" is partly true. It will never be as true of marriage as of divorce, for in divorce there will always be a greater variety of reasons for evasion, but in respect of evasive marriages it is true enough to deserve attention. This is the only point at which detached state action fails. For everything else, improvement state by state seems not only the best way in which to educate public opinion and public officials but the only way. At this across-the-border aspect of our subject, however, a breaking

down process would still be going forward by means of out-of-state evasion even if all improvements, state by state, had been effected. Laws could be passed in the 12 states that now have the low minimum marriageable age of 12 for girls,[1] raising that minimum to 16 and eventually even higher; the ages between which parental consent is necessary could be made more uniform in the different states than at present; proof of age could be demanded; so could proof of residence and proof of divorce; both candidates could be required to appear before the license issuer, and that official could be enjoined to exercise due discretion—to satisfy himself that the facts are as stated and that the affidavits required are not (as so often they are at present) worthless scraps of paper. But even if ideal administration were attained in all the states, evasive marriages would continue so long as any important variations in state laws remained; nor could uniformity of laws, if secured, be preserved unless all progress were put an end to. As soon as one state raised its legislative standards above those of its neighbors, evasive marriages would begin again. At this one point, we repeat, something more than individual state action is necessary.

All the other arguments put forward in favor of federal action would seem to be based upon too slight a knowledge of the processes by which good administration is achieved. Is it true, for example, that after years of endeavor nothing whatever has been accom-

[1] For names of these states, see Appendix B, Table 3, p. 370.

plished? On the contrary, the state of New York did not have a marriage license requirement until 1907; the gradual spread of the advance notice idea is a matter of the last 30 years; within a generation, the minimum marriageable age has been raised in over a third of the states. And these substantial gains have been made without any concerted, well-organized attack upon the problem. In even a brief analysis of proposed federal legislation it must be apparent how little is yet known about the measures that are workable and the measures that are not; it must be apparent to how negligible a degree marriage law administration has been made the subject of serious study. It is true that we have the proposed Marriage License Act of the Commissioners on Uniform State Laws drafted in 1911, but there was little concerted effort then or later to get this measure adopted or to educate the public with regard to it.

Undoubtedly there should be greater uniformity throughout the states than there now is, though not "a uniform law," as the proposed federal law is often incorrectly termed, and not even uniform laws. Conditions are still very diverse in different sections of the country. A law enforceable in Michigan could not be enforced in Mississippi. But when there is co-operation among committees organized state by state to study and improve the situation, and when there is carefully watched experimentation, then the education of public opinion will have begun, and that education—the necessary element in every social

advance—will be effected far better locality by locality than through any federal provisions superimposed from Washington. In fact, agitation for federal action at this stage actually delays reform by diverting attention from practicable next steps to be taken nearer home.

On no preconceived political theory, therefore, but with the frankest possible recognition of the difficulties of the actual situation, it would seem to be clear that, though the time may come when these duties of local adaptation and adjustment can make way with safety for national regulation, the time for such regulation is not now and not for a good many years to come.

IV. POSSIBLE METHODS OF INTERSTATE ADJUSTMENT

"There is a great number of subjects covered by our state laws," said Elihu Root in 1910, "which are nobody's business but the business of the states, as to which a fair presentation of the inconvenience caused to other states by the policy followed by a particular state might lead to a change. *If it is worth trying as between separate nations*,[1] is it not worth while . . . to see if the states cannot agree upon such modifications of their peculiar policies, of their individual policies, as to do the least possible harm and cause the least possible inconvenience to their sister

[1] The italics are ours.

states?"[1] This form of accommodation, as it might be termed, has already been illustrated in a few state marriage laws.

1. *Accommodation.*—In New England there has developed out of a common background and easy intercommunication a natural adjustment in aid of the enforcement of the advance notice laws. Such laws, if enforced in a chain of states, should go far in reducing out-of-state evasions in all of them. Advance notice, wherever it has not yet been tried, constitutes the most important single step in reforming marriage law administration, and this measure is made far more effective by interstate co-operation.

Rhode Island and Vermont are, as we have seen, the only two New England states that require no advance notice of any kind before a marriage license can be issued. Those two states do require instead, however, a period of delay between license issuance and marriage. New Englanders familiar with the advance notice movement in that section of the country claim that most of the laws were not passed by the respective states merely for the benefit of their own residents; they were enacted because a neighboring state found itself unable otherwise to assure effective enforcement of its advance notice law. This origin is also indicated by the nature of the legislation passed in Rhode Island, for there the advance notice law applies to non-residents of the state and to them only. The Rhode Island measure was adopted to

[1] *National Civic Federation Review*, March 1, 1910, p. 13.

assist Massachusetts in enforcing a law that the former state did not regard as desirable for her own citizens. And this step was taken under circumstances that theoretically are regarded as the most difficult. Rhode Island was receiving a considerable sum in license fees from Massachusetts citizens who desired to escape advance notice, yet she passed a measure that deprived her of this source of income.

Here, in accommodation then, is a method of procedure that the marriage law committees of adjoining states or the states of a regional group could begin to work for without further delay.

2. *The Double License Plan.*—In addition to advance notice there is another measure—one not yet tried anywhere—that would aid greatly in overcoming the evil of marriage law evasion. This is the double license plan, to which reference thus far has been only incidental.

Many forms of evasion and fraud would be rendered difficult if the place of residence of at least one of the candidates for matrimony could always be the place of license issuance. But there are legitimate reasons, in some cases, for marriage outside the state of residence of either candidate. The double license plan meets this complication and meets it very simply. It is based upon the third section of the Commissioners' Marriage Evasion Act,[1] and supplies the administrative device necessary to make that section effective. The section requires a license issuer to

[1] See pp. 196–197 of this chapter.

satisfy himself that candidates from other states are qualified by the laws of those states to marry. Unfortunately the Commissioners' Act provides no means by which an issuer can assure himself that candidates are thus qualified, so usually he is satisfied by nothing better than the affidavit of the candidates themselves. If, however, instead of an affidavit, the candidates applying in a state where both are non-residents were required to present as evidence of good faith a license obtained at the residence and marriage license district of the prospective bride, then, if the pair were found in addition to be qualified under the laws of the state in which they wish to marry, a license could be issued authorizing the ceremony there, and the first license would be filed merely as proof that the law regulating issuance of licenses to non-residents of the state had been complied with.

If, for example, a San Franciscan wished to marry a Philadelphia woman in New York, he could do so under the double license plan by first satisfying the Philadelphia issuer, when both candidates appeared before him, that the marriage would be in every way consistent with Pennsylvania law. He would then present in New York the Pennsylvania license thus obtained as evidence to the New York issuer that he and his prospective bride were entitled to a license to marry in New York State, provided, of course, they were also able to meet the qualifications of the New York law. It is assumed in this illustration that Pennsylvania will always require the personal appear-

ance of both candidates before the license issuer. New York State does this now and every state should.

If the double license plan for out-of-state candidates were supplemented by the personal appearance of them both and by an advance notice requirement, not only would disqualifications be brought to light, but the number of evasive marriages celebrated in any state having these 3 provisions could be reduced to almost zero. And although the double license plan would make applications in another state for the purpose of evasion of little avail, marriages celebrated outside the state of residence of either candidate for legitimate reasons would be in no wise interfered with by the change. But any such arrangement as the one proposed would have to be effected by interstate agreement if effected at all. As intercommunication between states has become easier and more frequent such agreements have seemed more and more necessary, whether arrived at informally, by accommodation, or by other means.

A more ambitious plan of co-ordination than those already suggested is one not available now in connection with marriage law reform, but in the future it may be destined to play an important part both there and elsewhere in reconciling local with regional interests and both of these with the welfare of the nation.

3. *The State Compact Method.*—The state compact method was described in a report of the Commissioners on Uniform State Laws in 1921, and fully

set forth by Professors Frankfurter and Landis four years later.[1] Professor James H. Wigmore in commenting upon the plan says, "The favorite solution, of course, is an amendment enlarging federal powers. But this is misguided. In the first place, it enslaves large minorities to the will of distant majorities—an unhealthy result. In the next place, it requires a vast and expensive propaganda to accomplish tediously a solution of one or two only of the problems. In the third place, it increases the already too complex federal bureaucracy. In the fourth place, it must involve the whole nation, while most of these problems affect only a particular area or group of states."[2]

Article 1, Section 10, of the Constitution of the United States stipulates that no state shall enter into any treaty, alliance or confederation, and that, further, no state shall, *without the consent of Congress*, enter into any agreement or compact with another state. "The Constitution puts this power negatively in order to express the limitation imposed upon its exercise," but the power is there, astutely creating "a mechanism of legal control over affairs that are projected beyond state lines and yet may not call for, nor be capable of, national treatment."[3] This

[1] Proceedings of the National Conference of Commissioners on Uniform State Laws, 1921, pp. 297–367.
Frankfurter, Felix, and Landis, James M.: "The Compact Clause of the Constitution," *Yale Law Journal*, Vol. 34, May, 1925, pp. 685–758.

[2] *Illinois Law Review*, Vol. 19, February, 1925, p. 479.

[3] Frankfurter and Landis, *op. cit.*, pp. 691 and 695.

clause grew originally, we are told, out of boundary disputes between the colonies, but it has been applied to waterways and navigation, to what is known as "conservation"; it permitted the creation of the Port of New York Authority, and during the next decade we may hear much for and against it in connection with the development of "giant power." It is true that "collective legislative action through the instrumentality of compact by states constituting a region" has been resorted to only where property rights have been involved, and that interstate agreements looking to the reform of marriage legislation with the ratification of Congress, instead of being a thing to work for at present, may have to wait for the industrial developments of the next two decades. But if this power were extended some day to the group of public responsibilities here under consideration it would not be the first time that adjustments of rights exclusively material and economic had preceded and prepared the way for like adjustments in the more elusive and difficult field of social rights.

It is true that just beyond the boundaries of any group of states constituting a region in which interstate adjustments by any one of the plans here proposed might seem feasible, there could still be a degree of friction and maladjustment. Two facts, however, should be kept in mind. The first of these is that most people who have a motive for evading marriage laws do not and many of them cannot travel very far. Even when they are seeking divorces

they do not travel in large numbers as far from home as the daily papers would lead one to infer. While we were reading a great deal about Paris divorces in the newspapers, it remained true that an overwhelmingly large percentage of all divorces obtained by American citizens were being granted in the home states of the contestants.

The other fact to be remembered is that state legislation is often imitative—it follows the lead of the states showing initiative. The license system itself started in the marriage laws of a few states and gradually spread to all of them. Similarly, we may expect advance notice and the double license plan to spread when once public opinion has been aroused, and aroused in practical and specific ways, instead of by vague appeals for federal regulation. We may also expect interstate co-operation to spread rapidly after a few successful demonstrations of effective working together among groups of neighbor states that are in several widely separated sections of the country.

PART III

THE MARRIAGE CEREMONY

CHAPTER X

THE CIVIL OFFICIANT

IT WILL be remembered that one of the 4 marriage market towns earlier described had a small group of marrying parsons, but that the other 3 towns depended chiefly for marriage ceremonies upon certain marrying justices.[1] The kind of service of which a marrying justice can be capable has also been illustrated in connection with our discussion of child marriages.[2] It must be conceded, however, that in the 2 states which do not recognize civil ceremonies as legal, marriage market towns still do a thriving business. In one of these 2 there are some of the most disgraceful Gretna Greens to be found anywhere.

Of late years the newspapers have contained much discussion in favor of and against civil marriage. Some critics have even gone so far as to claim that about 90 per cent of all the marriages ending in divorce began with a civil ceremony. We have not been able to discover the basis of this estimate.

Some thoughtful religious celebrants prefer to confine their ministrations to uniting in matrimony those to whom the religious ceremony has religious

[1] Chapter IV, Exploitation, pp. 92–98.

[2] Chapter VI, Youthful and Child Marriages, p. 126.

significance. It should encourage these celebrants to know that a large majority of candidates, with ample opportunity in nearly all the states to make their own choice, do definitely prefer the religious ceremony. Naturally there are no returns from civil officiants in the few states in which civil marriage is illegal, but we have been able to examine the records of 51,755 marriages in 52 different license offices in 15 states and the District of Columbia.[1] Civil ceremonies were in the majority in 11 of these 52 license districts, but 7 of the 11 were marriage market towns. In 41 of the 52 districts more than 50 per cent of the ceremonies were religious, and only 3 of these 41 were marriage market towns. In 4 of the 41 districts religious ceremonies constituted between 50 and 60 per cent of the total; in 13 they were between 60 and 70 per cent; in 6 they were between 70 and 80 per cent; in 10 they were between 80 and 90 per cent; while in 8 they were between 90 and 100 per cent.

It would be stating the present situation conservatively, we believe, to sum up the evidence gathered in this and other ways by estimating that, as a whole, not more than a quarter of the marriages celebrated in the United States are civil.

Among the various reasons for seeking a civil ceremony, custom stands first. Foreigners from lands in which civil marriage is obligatory and with whom

[1] Forty-eight of these 52 offices were visited, but returns from the 4 others were obtained without visits.

the old ways are still compelling, naturally seek a civil officiant, though their civil marriage ceremony is often followed by a religious one. Then there is a general impression, whether true or not, that representatives of the civil power are not going to ask many questions. Consequently those who remarry after a divorce, those who have a wife in the old country whom they wish to ignore, those about to contract a so-called "forced" marriage, and those who seek to marry below the legal age are all more likely to choose a civil officiant than a religious one. And it naturally follows that persons in the groups just mentioned prefer to marry out of town or out of state. The few, however, who seek to avoid a religious marriage for what are often dishonest motives do not complete the list of those who prefer a civil ceremony. There are, of course, people who have no church connection of any kind; church members who have had a disagreement with their own church; and engaged pairs with two different religious affiliations who are anxious to avoid the embarrassment of making a choice between them. Then again the desire to marry as inexpensively as possible may be another motive, since for certain people a religious ceremony implies a church wedding with elaborate arrangements and large expenditures. Some of these varying reasons for choosing a civil marriage are good and some of them bad, but it should be evident that the good reasons are good enough to make civil marriage a thing for which the state must provide.

The task before us, therefore, in the space that can be devoted to this particular subject, is to describe the characteristics of civil marriages as we have been able to note them, and then to discover in the procedures now in effect a few possible suggestions that deserve to be more widely adopted.

I. JUSTICES OF THE PEACE

In the marriage laws of a number of states every member of the judiciary is authorized to perform the marriage ceremony, but the public functionary most often mentioned in such laws is the justice of the peace. Justices as a class are now excluded from officiating in 6 states only,[1] while in 38 states and in the District of Columbia they are specifically mentioned as qualified to officiate, and in 4 other states they seem to be included by such phrases as "any judicial officer," "any civil magistrate," "any officer authorized to administer oaths." Our own tabulation of marriage records in 46 license offices in 15 states shows that, out of 2,472 civil ceremonies, 63.3 per cent were justice of the peace marriages, while at the remaining ceremonies judges and police magistrates were most often the officiants.

In 1888, Frank Gaylord Cook of the Boston bar published 4 valuable articles in the *Atlantic Monthly* on various aspects of the marriage celebration. He reported that at that time the office of justice of the

[1] New Jersey, Rhode Island, Virginia, Delaware, and the 2 states that do not permit the civil ceremony in any form, namely, Maryland and West Virginia.

peace was often sought in Massachusetts as a convenience by men who were practising law or engaged in business. This was due to the fact that justices had power to administer oaths and take acknowledgments. The appointments were not limited in number, and it had come about in this way that there were "in the city of Boston alone over two thousand justices of the peace with absolutely no special qualifications and hardly any responsibility, but with full authority" to represent the state in solemnizing marriages.[1] Many of these men were believed by Cook to be unaware that such a power was incidental to their office; if informed of it they would have been "greatly amused at the absurdity."

One New England town elects at the present day 21 justices of the peace, but only about half a dozen take the trouble to qualify. "They do it solely to be able to marry people," we were informed, "for they never try cases. The office is a constitutional one and the election must be held, but there is no need for it."

Since Cook's articles were written Massachusetts has adopted a provision that justices of the peace must be individually and separately commissioned to solemnize marriages, though if the justice is also a city or town clerk or a town clerk's assistant, a registrar or his assistant, or a clerk of court or his assistant, he needs no commission to act. By 1922

[1] Cook, Frank Gaylord: "Reform in the Celebration of Marriage" in the *Atlantic Monthly*, Vol. 61, May, 1888, p. 685.

the number of justices commissioned to officiate at marriages had been reduced to 257 for the whole state. After there had been some newspaper discussion of child marriages in 1925, the Governor of Massachusetts announced his intention of reducing still further the number of these commissioned justices as their terms expired. By the beginning of 1926 the number had been reduced to 226. The Secretary of the Commonwealth writes that not only are these appointments carefully scrutinized by the appointing official but that the authority of the appointees "may be revoked at any time for cause."

In the course of our field investigations we have interviewed 67 civil officials authorized to solemnize marriages. A large proportion of the justices of the peace interviewed were visited not in marriage market towns, where one would expect to find the most unscrupulous of them, but in the ordinary course of our field inquiries. In nearly all places visited it was found that officials and public-spirited citizens had no good word for justice of the peace marriages, though our purpose here is not to report these criticisms but to summarize what the justices had to say for themselves. We tried in our interviews with them to get at their own point of view and also to draw out any comments that they had to make on current proposals for marriage law reform.

Often justices of the peace are established in offices near the court house, sometimes directly opposite. At one of the court houses, as the license clerk re-

ported to us, there is a telephone girl so placed that she sees people when they pass through the corridor and into the license issuer's office. If she believes that they are seeking a marriage license, she telephones to a justice whose office is across the street. He then comes over and stays in the corridor until the pair who have just received a license appear. Of all the marriage fees procured in this way the telephone girl receives a share. Formerly, justices in the town came into the license office itself and almost fought there over their quarry, but later these troublesome officials were denied admission. The justice across the street was violently opposed, when interviewed, to any change whatever in the marriage laws. It was much better, he thought, to let people marry and then get divorced if things did not "turn out all right."

Another justice (this second one was in a marriage market town) had the following on his business card:

If a man loves a girl
That's his business.
If a girl loves a man
That's her business.
If they want the knot tied
That's my business.

Still another in the same town accosts people sitting in parked automobiles whenever he finds that their cars have license plates that show they have come from outside the state. He insists that some of the occupants must want to get married.

What are the views about marriage of the justices we have interviewed? Some agree in a more or less perfunctory way with any proposed reform, some have ideas and express them well, while others are frankly standpatters. The following are a few examples of the notes taken of interviews:

Mr. J———— is the only justice elected in his city. He has a handsome suite of rooms in the court house. Says he has never given any thought to the marriage laws. Many of the people he marries are divorced persons, and he gets a number of out-of-town candidates. Many of these latter give incorrect addresses, as he discovers when he asks them where the marriage license shall be sent after it is recorded. Occasionally he has felt that some candidates were under the legal age, but he could not refuse to solemnize the marriage when the county clerk had already given the pair a license. He marries all sorts of people, of all colors and descriptions. Once he married a hunchbacked woman of 60 to a man about half her age.

This justice is not in a marriage market town, but the one next quoted was.

The interview in Justice C————'s office in the basement of the courthouse lasted about an hour. During our conversation a marriage took place in the same room. One of his assistants officiated, and the Justice continued to talk without interruption while this marriage was being solemnized. He is opposed to any change that would make marriage in the slightest degree more difficult. Does not see why licenses should not be issued at any hour of the day or night. If any attempt is made to curb marriage it will simply increase immorality. Even if there is a separation almost immediately after the ceremony it is much better for the marriage to take place, because people can look others in the eye better if they have been together with the sanction of the law

rather than without. Would not for a minute approve of any advance notice. He puts the grist in the hopper downstairs and they winnow out the chaff upstairs (referring to the divorce court). All he is interested in is in getting the couples married.

Another marrying justice verifies a newspaper interview in which he is reported to have said, "Marrying folks is the passion of my life." When seen he favored progressive marriage laws. After questioning a couple, if he is not satisfied as to the propriety of the marriage, he sends them away. They can go to a preacher. The preacher will perform that ceremony but he will not. In his published interview he makes the further statement that he can tell "right off the bat whether the man thinks enough of the woman he is going to marry. If he don't show signs of being a good husband in the making and I find it out, I won't perform the ceremony."

The foregoing positions are representative of those taken by a large majority of the justices interviewed. But a much smaller group were familiar with some of the complications of this knotty subject and expressed themselves as here reported:

Justice B———, owing to the many hasty marriages that have come to his attention, favors an advance notice law. He cited the case of one man, son of a wealthy Easterner, who proposed marriage to a certain woman at a dinner one night. They took out a license that evening and were married at the justice's own home very late. The next morning at eleven o'clock the bridegroom appeared at his office and begged him to destroy the license. An hour later the bride came to him with the same request. Of course, he could not accommodate them, but they never lived together afterwards. When license issuance at the city or town of residence only was suggested to him, he thought this would help to reduce the number of under-age marriages. There had been some opposition to marriages by justices in his

city on the ground that they lacked solemnity. His own position was that whether the obligations were to be taken seriously or not depended entirely upon the persons involved. A marriage was solemnized in his office while the interviewer was there. The ceremony was very short. Though it took place only six or eight feet away, the interviewer could hear only a portion of it. The bridegroom placed a ring on the bride's finger and Justice B———— had them join their right hands after each had said, "I will." Religious ceremonies are more impressive unquestionably, but this civil one compared favorably with most of those observed in the offices of civil officiants.

Justice M———— was interviewed about a case that had had a good deal of newspaper notice. He said he was offered a high fee by an intermediary to marry that particular pair—$25.00 perhaps at first, and later the impression was given him that this amount would be doubled—but he did object to these middle-of-the-night marriages, so he refused. He has not been solemnizing marriages for a long time. Agrees with us that both candidates should be required to appear at the license office in person. He also believes that there ought to be a law requiring publication of the applications.

A good chance to compare the basis of selection between religious and civil ceremonies was taken advantage of in the Cleveland study of school-girl brides already cited.[1] The 262 girls found to have married under the age of 18 during a given period had civil and religious ceremonies in almost equal numbers. But in 71 per cent of the civil marriages the law that required parental consent was found to have been violated and false ages accepted instead by both license issuer and officiating justice, while this was

[1] See Chapter VI, Youthful and Child Marriages, p. 140.

true in only 42 per cent of the religious ceremonies. The author of the study suggests that the young girl "who is marrying without the consent of her parents fears that her intention may become known, or that some objection will be made to the legality of the marriage, if she waits to ask her own or a neighborhood clergyman to officiate."[1]

The advertising methods of those justices who can be described as marrying justices are often ingenious. A relation between commercialism and the marriage celebration has been noted in our discussion of the marriage market town,[2] but advertising is not limited to those particular places. In a large city of one of the central states it is possible to stand on the court house steps and read, without moving, the huge signs of 3 justices who, elected in the county, have their offices in the heart of the city for the sake of the larger opportunities there afforded to collect marriage fees. One sign covers the entire glass front of the office; another is in 2 languages. In some towns these places, as already noted, are styled "marriage parlors," and a city of 350,000 population in the Middle West is reported to have no less than 3 such parlors. We found at the office of a justice in Texas a sign on the first door reading, JUSTICE OF THE PEACE—MARRY YOU IN TWO MINUTES, and a paper fastened on the second door which read as follows: "If not in his office, can be found at any hour day or night by calling Telephone No.——. For sud-

[1] School-girl Brides, p. 17. [2] Chapter IV, Exploitation, pp. 88–101.

den service can get here in five minutes." In a state having an advance notice law, one marrying justice mails letters that solicit patronage to all persons whose applications for licenses have been posted. Another justice solicits trade by advertising in the daily paper of a large city across the state border from his home town. Still another issues blotters on which are printed his portrait and the following advertising matter:

Portrait of the Justice

A marriage license issued in any county in ———— is good in any other county in the State.

When you go through ———— don't fail to see

THE GREAT WHITE WAY MARRYING PARLORS OF JUSTICE ————

Telephone No. _____

Address _____

You will be welcome any hour of the day or night any day in the year. See the famous Horse Shoe and Bell, under which nearly 10,000 couples have been made husband and wife. Don't miss the chance of your lifetime. Drop in when you are in ————.

It is a pleasure, in contrast, to report a visit to the office of one justice of the peace who not only has no sign of any kind, but who assured us that if he happens by chance to be in the court house when two persons are getting a marriage license he hurries away.

It is against the law in some states for officiants to advertise or procure by any other means the chance to perform a marriage ceremony.[1] We are informed that justices of the peace in Boston evade the Massachusetts law by merely advertising that they are "at home evenings."

Reference has been made in these pages several times to the practice of employing runners to solicit trade for marrying justices. It seems unnecessary to enlarge upon this practice further, save to note that it is not confined to the 57 places that we have classed as marriage market towns. In most places, however, there is sooner or later an outcry against the employment of runners; then comes a tug of war

[1] Massachusetts Law. "It shall be unlawful for any person to advertise in a newspaper circulated in this commonwealth, or by any other means, to perform or to procure the performance of the marriage ceremony." Penalty, $10 to $100.—Ch. 249, Acts of 1902.

Kentucky Law. Sec. 2103. "It shall be unlawful for any person for compensation or reward, to solicit, persuade, entice, direct, or induce other persons about to be married to go to or before any minister or other person authorized to solemnize marriage, to be married; or to receive any part of any sum of money or other remuneration paid such minister or other person for solemnizing marriage, and it shall be unlawful for any minister or other person authorized to solemnize marriage to pay, or give to, or divide or share with any other person any sum of money or other thing obtained by them for solemnizing marriage." Penalty of $10 to $100.—Carroll's Kentucky Statutes, 1922, pp. 999–1000.

between the justices and their political friends on the one side and indignant citizens on the other.[1]

There is no way of estimating the profits of the marrying justice. He will not talk about them and one cannot wonder that he will not. One justice, in answer to a direct question, said that the amount of his fee depended upon the accessories to the ceremony, and that there was no "top limit" to what he would take. The term "accessories" referred in his case to a framed marriage certificate with red roses as decoration, to a Bride Book with poetry in it, with places for the marriage certificate and seal and for the signatures of witnesses, attendants, and so on. Added to all this, he plays a wedding march when the bridegroom is willing to pay for it.

Fee-splitting was sometimes discussed with great frankness by the license issuers interviewed. One said his deputies probably earned something by "throwing a marriage." He told them to "go to it" and get all they could, and named a particular justice as "once in a while splitting with the office." Salaries did not go far, he added, and the clerks ought to make whatever they could "on the side." We did not find that anything like a majority of license issuers were willing to be co-operative in this particular way. The issuer in Los Angeles prints a warning as part of the instructions issued to those who wish to obtain a marriage license. It reads:

[1] See also p. 231.

Before you leave the building or premises persons may attempt to take or direct you to those whose only occupation is marrying people for money, dividing their profits with agents or assistants lying in wait for you outside. Such persons seek only your money, not your good.

We have seen in our description of Marriage Market Town No. 2 how at one time a combination of justices controlled both solicitation and fees.[1] In another marriage market town not here described a combination of justices is reported to have offered to pay a new one if he would officiate at no marriages. But he soon became a member of their combination instead.

In states in which such co-operative arrangements have been working profitably for the justices concerned there is likely to be a strong lobby against any effective change in the marriage laws. "There are justices of the peace in each one of our 92 counties," wrote a state health officer in 1920. "In all, about 400 in the state. These justices of the peace are united against any law which interferes with their right to perform marriages. . . . The reason these marriage centers exist in———and ———counties is because they are both of them contiguous to great cities. The runaway couples from [a neighboring state] finding it difficult to secure a license [there], pass over the river into———. . . . Whenever a bill is introduced into the legislature,

[1] Chapter IV, Exploitation, p. 93.

the State House becomes filled with justices of the peace to combat it and they have so far prevailed."

Urdahl, writing of the fee system in 1898, says: "Perhaps no single influence has done more injury through the American courts than the fee system in its effects on the justices of the peace." The decision of the justice, he declares, is almost certain to be for the plaintiff because it is the plaintiff who has the option of bringing his suit in any particular justice's court. If the justice decides the case in favor of the defendant, he will receive no more patronage from the particular lawyer who gave him the suit.[1] Since Urdahl wrote, the office of justice of the peace has steadily decayed "by transfer of its jurisdiction to other courts."[2] Perhaps this is why the justices are so eager to capture marriage fees.

II. OTHER CIVIL OFFICIANTS

Many other civil officers besides justices of the peace are authorized by law to solemnize marriages. To summarize briefly the various state provisions on the subject, the following are authorized: The governor, the mayors, the chancellor, the vice-chancellor, any judge, any judicial officer, judge of any court of record, judge of the supreme court, judge of a superior court, judge of a district court, judge of a dis-

[1] Urdahl, Thos. K.: "The Fee System in the United States," in Transactions of the Wisconsin Academy of Sciences, Arts, and Letters, Vol. 12, 1898, p. 218.

[2] Gilbertson, H. S.: The County. National Short Ballot Organization, New York, 1917, pp. 131–132.

trict court of appeals, of a circuit court, of a county court, of a probate court, of a court of common pleas, of a municipal court, of a city court, of a police court, any justice or magistrate, any person commissioned by the court. To be added to this list are the following: registrars of vital statistics and their assistants, city recorders, clerks of court, town and city clerks and their assistants, members of the board of supervisors, warden of the town, women appointed by the governor, notaries, any officer authorized to administer oaths, and superintendents of institutions for Indians or for the deaf and dumb.

No one state, of course, includes all of these possible officiants in its marriage provisions, but the states have been more than liberal in extending this privilege to many different grades of civil officials who are responsible for other duties also. As if this were not enough, the custom seems to have grown up without any legal authority of permitting sea captains on some of the ocean liners to celebrate marriages at sea.

Many civil officers authorized to officiate at marriage ceremonies do not wish to exercise the privilege and avoid doing so whenever possible. Especially is this true of judges of the higher courts. "The various judges do not like to solemnize marriages," said a clerk of one of the Alabama courts. In states that assign this power to their probate courts, judges of the other courts are likely to refer candidates for matrimony to the probate judge.

This disinclination extends to city and town clerks in a number of places where they are also license issuers. One town clerk told us that he had officiated at only one marriage, though his predecessor had performed many marriages and had enjoyed it. Another one reported that he had solemnized only two marriages and had felt some hesitancy in officiating at these. He asked the candidates whether there was any reason why they did not wish to be married by a minister, but when he found that they did not wish a religious ceremony, he had felt he could not refuse them. A deputy town clerk claims that he does not officiate at any marriages, though authorized to do so; he prefers to send the few who seek his services to clergymen. Contrasting with these officiants, we found in one large city a watchman of the county building who was also mayor of a small place that was his home in the same county. By virtue of this office, he was marrying people in the heart of the city at the county building. There would seem to be at least one good reason why clerks of court should not be authorized to solemnize marriages. When minor court officials have this power (sometimes they seek appointment as justices of the peace in order to get it) they are tempted to try to influence court decisions that involve fornication, abuse, or rape by urging a marriage ceremony as the remedy. The subject of forced marriages has been treated briefly in another chapter.[1] It need only be added here that decisions

[1] Chapter VII, Hasty Marriages, pp. 155–162.

on matters of such delicacy as those involved in any forced marriage should be settled as far away as possible from a group of clerks who are sparring for marriage fees.

In 2 states only are notaries empowered to officiate at a marriage. In one of these states a notary who was also a jeweler is reported to have said to 2 young people who came to his store for the ring that he could "tie them up as securely as any preacher on earth." In 2 other states we found instances of notaries acting illegally. As they could take an affidavit, they claimed that they were empowered to marry people. For this offense one such functionary had his appointment as notary revoked.

III. SUGGESTED REMEDIES FOR THE PRESENT SITUATION

This chapter has already named the types of situation in which the civil officiant seems to meet a genuine need. We have estimated, however, that not more than a fourth of all candidates for matrimony prefer the civil ceremony, and this proportion would be even smaller if evasive out-of-state marriages, under-age marriages, and hasty marriages were greatly reduced in number by the measures advocated earlier in these pages. But thus far our account of civil marriage would seem to represent the situation as a well-nigh hopeless one, for it is evident enough that the officials who could best fulfil the public task of solemnizing marriages avoid it, and

that those most eager to assume it are unfit to represent the state in any capacity whatever.

Marrying justices argue that it depends entirely upon the principals to a marriage whether obligations will be taken seriously or not; that the nature of the ceremony has nothing to do with this. The American public, however, is beginning to realize not only the importance of a well-ordered ceremony, but still more the importance of intelligence and disinterestedness on the part of the person officiating, together with knowledge of the commitments that, in each case, he is sanctioning. In other words, when a new family is to be founded with the sanction of the state, the state's part in the contract should be worthily borne.

What are some of the signs that the marrying justice is certainly doomed to extinction, and that he will be replaced by a type of civil representative as different from him as the trained nurse of our own day is different from the "Sairey Gamp" of other times? Slight beginnings are all that can be recorded as yet, but these indicate the direction that reform will probably take.

1. *The number of civil officiants can be very greatly reduced.* Though this may be accomplished by omitting many of the miscellaneous officials now specified in the various laws, the most important reduction would be in the number of justices of the peace. A few states, as already noted, no longer allow them to solemnize marriages at all. New York

allows them to do so in only the smaller cities and towns; while Massachusetts, as we have seen in this chapter, provides that they may not officiate at marriages unless specially commissioned for the purpose, their commissions being revocable by the Governor at any time for cause. On the whole the Massachusetts plan seems to be the more satisfactory one.

The New York limitation is based upon the fact that justices are not needed for marriage ceremonies except in small, inaccessible places, and even in these places they will not be needed for that purpose much longer because of the rapidly multiplying means of transport. The Massachusetts law, on the other hand, through the revocation clause, provides precedent for a system by which the work of all civil officiants may be supervised by some official to whom they are responsible. Why should not both license issuers and marriage officiants be held to account, and be aided materially in the proper discharge of their duties by the type of state supervision to be described later in this book?[1]

2. *The most populous cities and counties can cure some of the worst of the present evils by establishing central marriage bureaus.* Chicago and New York City have done this. A brief account of their experience may point the way for similar undertakings elsewhere. Wherever there are civil ceremonies enough to occupy a considerable part of the time of one or more persons, such bureaus, by centralizing

[1] Chapter XV, State Supervision, pp. 321–329.

their service, make public control of its quality more possible, while all the old, unsavory hangers on—the taxicab drivers, professional witnesses, runners, and so on—disappear from the scene.

In Chicago, the marriage court, as it is called there, is independent of the license issuer's office. It owes its origin to the judges of the superior and circuit courts, who decided to establish it in order to do away with scandalous soliciting by runners employed by various rival justices. Half a dozen of them would often accost candidates who were going to or from the license office—sometimes temporarily separating the pair in their zeal—and no attempts to keep these men out of the building were successful. Certain judges now officiate at the marriage court in turn, and we are told that the marrying justice in Chicago is now a thing of the past. Unprejudiced witnesses say that the ceremony itself lacks impressiveness at the Chicago marriage court, but that it is a vast improvement over the procedure of the old régime. One criticism made is that the fee is too high. It is $5.00, but all fees collected are turned over to the county, and there are no extra charges for witnesses, no tips for runners, and so on, as in the old days.

The New York City bureau owes its existence in large part to the attempt of 2 aldermen to rescue marrying pairs in that city from an aldermanic ring which was then estimated to be making between $30,000 and $40,000 a year from the single source of marriage fees. Fees to aldermen had been declared

illegal, but as these office holders were still the most available officials authorized to perform ceremonies they continued to reap a harvest from gratuities. This was done in part through 3 clerks who were not city employes but were appointed by the aldermen to perform certain clerical work incidental to the marriage ceremonies. At last, by act of the New York Legislature in 1916, aldermen in cities of the first class were deprived of the power to solemnize marriages and that function was transferred to the city clerk and his deputies who are also the license issuers of New York City. The new plan has worked well for more than ten years. Not only has it done away with an intolerable situation, but the ceremonies conducted in the marriage chapel adjoining the license office in Manhattan are decent and orderly, and the same is true of the marriage chapels of the other boroughs of Greater New York. Several deputy clerks officiate in turn, all gratuities are frowned upon, and the $2.00 fee and no more that is exacted of every one goes into the city treasury. New York City always contains many transients. A number of these apply at the Municipal Building in Manhattan for marriage licenses. Out of 100 marriage returns examined in that office 42 were celebrated in the marriage chapel in the same building. When New York State adopts a five-day-notice law, as it undoubtedly will in time, and when it also requires non-residents of the state to present an

authorization from the bride's license district[1] before a New York license can be issued, the percentage of Municipal Building marriages will drop and the proportion of religious to the whole number of ceremonies will rise. Meanwhile, every one is agreed that the present arrangement is a great improvement over anything that preceded it.

It may be noted in passing that such a concentration of functions in a license issuing office as has just been described has been a part of the English system for 90 years. If you are not married by a minister of the Church of England, you get your license at the office of the superintendent registrar of marriages of your home district or of that of the person you intend to marry, and must do this before any religious celebrant other than a Church of England clergyman can officiate. If, however, after the license has been obtained, you prefer a civil ceremony, you are married at the registry office.[2]

One of the strongest arguments in favor of limiting the number of civil officiants, and then holding them strictly accountable for seeing that the law is complied with, is the fact that many civil officials, all operating on a fee basis, are very likely to organize a strong center of opposition to change of any kind in the state marriage law, and are especially likely to oppose its improvement.

[1] See the "double license plan" as explained in the preceding chapter, pp. 208–210.

[2] This plan of combined issuance and ceremony, where the officiant is a civil one, was advocated by Cook in the article in the *Atlantic Monthly*, Vol. 61, May, 1888, p. 688, already quoted.

3. *The appointed civil officiants can be required to turn over all solemnization fees to the county, city or town, and the acceptance of gratuities can be forbidden.* Little has been said about the civil official's fee for performing the marriage ceremony. In about half of the states the fee for civil solemnization—for justices of the peace at least—is fixed by law. It ranges in amount in these states from $1.00 to $5.00, while the other half of the country makes no provision for the regulation of fees. Regulation is of little effect, however, when the acceptance of gratuities is not prohibited in the statute that fixes the amount of compensation. Few candidates applying to a civil officer to be married know the legal fee, and as a rule the officiants do not mention it unless they are offered a sum smaller than the one stipulated in the law.

Under a plan by which all fees must be turned into the public treasury, the only justices of the peace who could officiate at marriages would have to be commissioned and paid fixed salaries by the county, city, or town in which they exercised this function. The fee system, responsible in the past for so much bad local government in America, should no longer be permitted to confuse and corrupt that part of the nation's social life upon which an important share of its well-being depends. The fee-seeking marrying justices should be put out of business by the states, and the fee-seeking marrying parsons should be dealt with by the churches.

CHAPTER XI

MARRIAGE AND THE CHURCHES

SHARPER than any distinctions to be found among different civil officiants are the contrasting attitudes toward the marriage celebration of different groups of clergymen. Some are fully aware of both the spiritual and the social significance of this part of their ministry; some, devoutly sensitive to the spiritual aspects of marriage, seem to have little knowledge of the practical everyday aspects that have been emphasized in these pages; while still others can be accurately described as nothing better than "marrying parsons," so lightly do they regard the wedding ceremony save as a source of revenue. Commercialism and a truly religious celebration have so little relation to each other that we shall reserve any description of the habits of the marrying parson for later consideration. We are fully aware, in venturing to discuss these two contrasting subjects of the religious celebrant[1] and of the clergyman eager for fees, that both belong primarily to church discipline, about which no layman is a competent judge.

[1] The title of celebrant, as used in connection with the marriage ceremony at least, belonged originally to the officiating priest at the nuptial mass, but according to the Catholic Dictionary the same title is used also for the chief officiant at other solemn offices, such as vespers. As employed here it denotes any minister of religion who conducts a marriage ceremony in a responsible way and as a religious function.

It has not been possible, however, to study the state's relation to marriage without including in the study the marriage ceremony too; for marriage laws, records, and procedures involve a degree of state regulation of the ceremony. Such data as our library work and field studies have brought to light must be reported upon, even though the report be limited to that secular side of marriage with which this whole book is concerned.

Different churches have different standards for the guidance of their members; these, while meeting civil requirements, are additionally imposed. Moreover, certain groups in the churches are beginning to concern themselves with the whole subject of the relation of the state to marriage and are seeking not only in the interest of religion but of good citizenship the enactment of better state marriage laws and the assurance of their better administration. Furthermore, it has become apparent that certain individual clergymen are now placing upon themselves obligations that are a distinct advance upon the formulated standards of their own religious denominations. These personal standards of the ministry are described in the next chapter.

I. DENOMINATIONAL STANDARDS OF THE CHURCHES

We seem to have noted in both our field and our library studies—though our generalization may be as vulnerable as any other—that those denomina-

tions organized under a centralized authority and provided with detailed rules for the discharge of all ministerial functions, especially functions relating to marriage, are achieving greater uniformity and closer observance of minimum standards for marriage ceremonies than are the denominations that more nearly approach, in fact if not in theory, a decentralizing policy. On the other hand there appear to be, among what might be termed the less supervised groups of churches, more individual clergymen who, taking their own initiative, apply standards well above any minimum requirement of church law.

The Roman Catholic Church stands out as the most conspicuous example of a religious organization with definite rules, formulated early, modified from time to time, now explained and enforced throughout all its branches, and interpreted in further detail by an ecclesiastical court. After a new code of canon law was promulgated by the Catholic Church in 1918, two volumes were published in this country to expound the 133 church canons that relate to marriage.[1] In the case books that have been prepared for seminarians and the priesthood by the Catholic Church, more than a hundred pages are devoted to typical case problems likely to confront the priest in connection with marriage. The compiler of one of these case books says in his introduction:

[1] Ayrinhac, Very Rev. H. A., S.S., D.D., D.C.L.: Marriage Legislation in the New Code of Canon Law. Benziger Bros., New York, 1918.
Petrovits, Rev. Joseph J. C., I.C.D., S.T.D.: The New Church Law on Matrimony. John Joseph McVey, Philadelphia, 1926, Second Edition.

Nobody supposes that book knowledge alone will fit the judge or the doctor for the practical work of the law courts and the sick-room. As little will a knowledge of speculative theology fit the priest for the work that he has to do. He is both a judge and a doctor. Only the cases that he has to decide are often more intricate than those which are heard in the law courts, and the diseases which he is called upon to heal are more difficult to diagnose accurately and to prescribe for than are those of the body.[1]

Aside from such detailed applications of church law, that law itself—to summarize only a few of the portions of it that seem to be related to the theme of this book—recognizes "the competence of the civil authority to the mere civil effects" of any marriage, and legislates only for the further regulation of all baptized persons. In other words "baptism is the source from which springs the sacramental character of the marriage contract."[2]

Impediments to marriage are classified by this Church as major and minor. The major impediments are (1) under age, (2) impotency, (3) previous and existing marriage, (4) disparity of worship (fewer marriages are prohibited by the new canon law under this classification than by the old), (5) holy orders, (6) solemn religious profession, (7) abduction, (8) crime, (9) consanguinity, (10) affinity, (11) public propriety, (12) spiritual relationship, (13) legal relationship.[3] Duly manifested con-

[1] Slater, Rev. Thomas, S. J.: Cases of Conscience for English-Speaking Countries. Benziger Bros., New York, 1911, Vol. 1, p. 7.

[2] Canon 1016. Ayrinhac, pp. 28 ff. Petrovits, pp. 8 and 27.

[3] Canons 1067–1080. Ayrinhac, pp. 136–187. Petrovits, pp. 143–309.

sent is necessary for a marriage that is recognized as valid by church authorities. Obstacles to the validity of consent are violence and fear, or agreement to unlawful conditions in the marriage contract.

Marriages are to be celebrated before the pastor of the bride in every case, unless a just cause excuses this, and it is the duty of a pastor or of an ordinary, before proceeding to a marriage, to find out whether the candidates are applying to the right parish. Publication of the banns is the rule, but there are a number of exceptions.[1]

Diligent investigation is required of the pastor. Cardinal Gasparri thinks it is incumbent upon a parish priest to make such an investigation "even if he should have a moral certainty as to the absence of all impediments" in a given case. And he should not "without sufficient reason," adds Petrovits, "delegate another to perform this task in his name. His inquiry should first be directed towards" the impediments already named.[2] "Then he ought to question separately and prudently, with great caution, both the prospective husband and the wife as to whether they consent freely to the marriage. . . ." The pastor must "inculcate and explain the obligations of husband and wife. . . . He must emphasize, furthermore, the duty of the parent toward the child. . . . The pastor should exhort the children who are still minors, not to enter marriage without the knowledge of their parents, or against their

[1] Canons 1022–1029. [2] Canon 1031. Petrovits, p. 55.

will when they have a reasonable objection."[1] Special rules are laid down for ascertaining whether a spouse who has disappeared is really dead.[2]

Finally, to end this incomplete summary of the social aspects of the new canon law as expounded by its commentators, "The civil authority is within its rights in prescribing the civil registration of marriages validly contracted before the Church. Failure to comply with this regulation within the specified time can be a just cause for even a severe penalty."[3]

The canons of the Protestant Episcopal Church in the United States of America devote less than a page and a half to the subject of the solemnization of marriage.[4] As in the Catholic Church, there must be at least 2 witnesses, the law of the state governing the civil contract of marriage must be carefully observed, and a record must be kept. The remaining section of the canon relates to the marriage of divorced persons. There is a proviso in this connection that it shall be within the discretion of any minister to decline to solemnize any marriage. This provision is interpreted by many of the Episcopal clergy to apply to other impediments than to that of divorce. An Episcopalian weekly periodical said in 1919,

> The Church's attitude toward this problem has not been altogether commendable. We have made pronouncements about the

[1] Petrovits, pp. 55, 76–77. [2] Petrovits, p. 153. [3] Petrovits, p. 29.

[4] Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America, Canon 43, p. 127. Reprinted in the Journal of the General Convention of the P. E. Church for 1925.

sinfulness of divorce; we have said nothing about the wickedness of certain kinds of marriage. If the Church had, in the first place, refused to bless certain kinds of marriage, there, perhaps, might not have been so many divorces to condemn. The institution which makes marriage an indissoluble bond and sets its face condemningly against divorce ought to accept more responsibility than at present it is willing to accept in dictating what kind of marriage is fit to be blessed at the altars of our churches. We do not accept this responsibility. Rectors and bishops will marry any parishioner to anybody within the canon law, if they are asked to do so. They may know, as frequently they must have known, that many of the marriages which they perform ought never to take place. Divorce scandal is not unlikely to follow such marriages.[1]

At the General Convention of the Episcopal Church held in 1925, a joint commission was appointed to study the whole problem of divorce, its conditions and causes, and report to the next Triennial Convention.[2]

To get some general idea of the attention now being given by the different Protestant and Jewish religious bodies in this country to the subject of marriage quite apart from the subject of divorce, we have examined all published proceedings of the various national conventions that they have held during the 11 years 1916 through 1926. Foreign language speaking bodies were not included in our search, nor were any denominations that had a total membership of less than a hundred thousand. This left 17 religious organizations that were national in

[1] *The Churchman*, April 5, 1919. [2] Journal for 1925, p. 312.

scope; 15 of them Protestant, one Orthodox Jewish, and one Reformed Jewish. Examination of the proceedings of 6 of the Protestant and one of the Jewish bodies revealed nothing on the subject. Material found in the 10 others is summarized in much abbreviated form in the following paragraphs:

The General Conference of the Methodist Episcopal Church for 1916 approved the uniform marriage act recommended by the American Bar Association and petitioned Congress to submit to the legislatures of the several states an amendment to the federal Constitution "to enact and enforce uniform laws on marriage and divorce."[1] A resolution of like effect was adopted again in 1924, but no other aspects of the relation of the churches to marriage appear to have received detailed consideration during the eleven year period covered.[2]

The Journals of the General Conference of the Methodist Episcopal Church South refer almost exclusively to the divorce side of the subject, but a report was adopted in 1926 which contained the following passage: "And we also urge that every reasonable effort be made to have the marriage laws of the several commonwealths strengthened. It should be made impossible for couples to be married without certain preliminaries, such as the publication of the issuance of the license, and the publication of the banns in the newspapers or from the pulpit, or both, a reasonable time prior to the date of the marriage. Strengthen your marriage laws and immediately the ratio of divorces will decrease."[3]

The Annual of the Southern Baptist Convention for 1918 records the passage of a series of resolutions urging (1) that ministers preach more frequently on the subject of marriage; (2) that they refrain from marrying divorced persons, except the

[1] Journal for 1916, pp. 618 and 466.

[2] Journal for 1924, p. 601. See, however, p. 252 of this book, footnote 3.

[3] Journal for 1926, p. 293.

unoffending when the divorce shall have been granted upon scriptural grounds; (3) that uniform marriage and divorce laws be enacted; (4) that such legislation conform to the teaching of the scriptures.[1] In 1920, however, the Convention abandoned, for the time at least, the idea of federal regulation and advocated "legislative enactment in the several states" of a uniform code that should prohibit the marriage of males under 21 and females under 18 without the consent of parents or guardians, with a "reasonable prohibition" as to age even with parental consent. This code, it was suggested, should require not only the procuring of a license but also the publishing of the banns for at least 30 days before the rite can be celebrated. Further, the code should require a physical examination by a regularly authorized physician, who shall give a certificate of health.[2] In 1925 the Convention's commission on social service repeated some of its former recommendations and reproduced in full in its report the "ten next steps" for an effective marriage reform campaign that had just been published in our book on Child Marriages.[3]

The Annual of the Northern Baptist Convention for 1924 records a resolution urging the passage of national marriage and divorce laws.[4]

The Minutes of the Biennial Convention of the United Lutheran Church in America for 1922 show that a report was adopted which advocated an interval between the issuing of a license and the ceremony. (The interval, as we have seen, should be between the application for a license and its issuance.[5]) This report further urges pastors and people to study the newer relations between industry and the home that threaten the stability of monogamous ideals.[6]

The Journal of the General Convention of the Protestant Episcopal Church in the United States of America records the

[1] Annual for 1918, pp. 107–108.
[2] Annual for 1920, p. 128.
[3] Annual for 1925, p. 120.
[4] Annual for 1924, pp. 248–249.
[5] See Chapter V, Advance Notice of Intention, p. 111.
[6] Minutes for 1922, pp. 415–416.

submission to the Convention in 1916 of a report from a commission instructed to consider legislation on matters relating to holy matrimony. One of its recommendations was that a clergyman may well refuse to solemnize a marriage without receiving such notice as will give him sufficient time to make the inquiries he may deem necessary. The commission, after considering the comparative advantages of state and federal legislation, recommended that no action be taken by the Convention on this subject.[1] At the next Triennial Convention this commission was discharged without adoption of its report.[2] A resolution introduced in 1922 endorsing medical certification for marriage failed of passage,[3] but both houses concurred in a resolution urging upon federal and state authorities the enactment of laws regulating the marriage of those who are physically or mentally defective.[4] In 1925 a commission on home and family life repeated this recommendation. It also approved the proposal of the American Bar Association that the states require by law a suitable interval between the issuance of a marriage license and the date of the performance of the marriage.[5] [This repeats the awkward reversal of the interval already referred to under the United Lutheran Convention.]

The National Council of the Congregational Churches of the United States passed a resolution in 1919 endorsing federal regulation of marriage and divorce.[6]

The Minutes of the General Assembly of the Presbyterian Church in the United States of America called attention in 1916 to the fact that the Assembly had endorsed federal regulation as early as 1903.[7]

The Proceedings of the General Conferences of the Evangelical Church, Evangelical Association, United Evangelical Church for 1922 emphasize the importance of proper supervision of children by their parents. "We may pass the most stringent divorce laws

[1] Journal for 1916, pp. 502–503.
[2] Journal for 1919, p. 49.
[3] Journal for 1922, p. 307.
[4] *Ibid.*, p. 114.
[5] Journal for 1925, p. 578.
[6] Minutes for 1919, p. 41.
[7] Minutes for 1916, p. 283.

and multiply courts and officers of law, but we fail if we do not begin at the other end of the task."[1]

The Central Conference of American Rabbis (representing Reformed Judaism) has frequently discussed marriage at its annual meetings. Their first meeting had empowered Dr. Moses Mielziner to prepare a manual on marriage and divorce.[2] In 1914 a committee presented a report on civil and religious marriage laws. It favored either a national law or the alternative of uniform state laws. Health certificates preliminary to the issuance of marriage licenses had been considered but no recommendation was made, whereas rabbinical divorce was definitely discountenanced. In 1921 it was decided that the different papers prepared by members of this same committee be printed after revision in the form of a manual. Up to the present, however, there has not been sufficient agreement for this suggestion to be acted upon.

It must be confessed that the different religious proceedings here summarized seem to show that the denominations named have taken little specific action as yet on the subject as a whole or on any aspect of it save divorce.[3] Perhaps this is not to be

[1] Proceedings for 1922, p. 42b.

[2] Mielziner, Moses: The Jewish Law of Marriage and Divorce in Ancient and Modern Times, and Its Relation to the Law of the State. The Block Publishing and Printing Co., Cincinnati, 1884.

[3] Since our summary was made, however, the 1928 General Conference of the Methodist Episcopal Church has adopted unanimously the following addition to its Discipline:

"We instruct our Board of Education to prepare courses of study setting forth the practical and spiritual values of marriage; such courses to be designed for use among young people in all our church schools, colleges, and universities;

"We urge our young people to seek parental, medical and pastoral advice before entering upon a relationship so vital to the maintenance of the home, the State and the Church;

"We urge legislation in all the States requiring that licenses to marry shall be issued only after public notice and the lapse of a reasonable period of time to be fixed by law."

wondered at, nor should we be astonished to find that a book describing quite fully the courses of instruction given in the United States in 131 Protestant theological seminaries omits any mention of well articulated courses on marriage. Such instruction is not referred to in the volume even incidentally.[1] The more objective approach, the tendency to analyze what is now happening and to apply, not any one remedy but detailed and diversified remedies, is attracting earnest attention from certain groups within some of the denominations; interdenominational bodies are becoming interested; while here and there individual clergymen are found to be taking a marked degree of care not required of them in their church disciplines. This ferment, however, has not yet materially influenced denominational action nor could it have been expected to do so at this stage. Resolutions in favor of an amendment to the Constitution of the United States empowering Congress to deal with both marriage and divorce were popular at religious conventions for a while, but in this country at least, discussion leading to constructive action by the national bodies of the Protestant churches had centered up to 1927 upon other themes.[2]

[1] Kelly, Robert L., LL.D.: Theological Education in America. George H. Doran Co., New York, 1924.

[2] Our reasons for lack of faith in the wisdom of attempts made thus far to deal with the state's relation to marriage through a proposed amendment to the Constitution, to be followed by a federal law, are given in Chapter IX, Evasive Out-of-State Marriages, pp. 198–206.

II. GROUP ACTION

In order to bring about some of the changes most needed in marriage laws and their administration it is not necessary to wait for united denominational effort, desirable as that may be. Action by groups within a denomination may have local beginnings; so may interdenominational group action. Some of the Gretna Greens described in our chapter on Exploitation have already brought vigorous protests from the ministerial associations of their towns and counties, followed by appeals to the legislature and the governor to do away with this public nuisance. Occasionally a fine bit of constructive legislation, such as the five-day advance notice law in Georgia, has had its origin in a ministerial association and is kept on the statute books during its difficult first years by their efforts.[1] Thus, the Georgia campaign for advance notice began with Atlanta's Christian Council, which kept the goal steadily in mind during a seven year campaign. Meanwhile ministerial bodies throughout the state aided by the Episcopalian bishop of Georgia had joined in, so had the social agencies, the women's clubs, and the newspapers, but the church leaders who originated the movement remained in active charge of it.

Another illustration of group action comes from

[1] A foolish amendment was passed in 1927 limiting advance notice in Georgia to candidates under the age of 21, but it is to be hoped that this limitation may soon be removed.

Connecticut, where unsuccessful attempts had been made previously to extend to residents the advance notice requirement that already applied to non-residents. Finally, advocates of the measure, besides getting the endorsement of the Catholic bishop, were able to secure also the active participation at legislative hearings of several clerical members of the Federation of Churches and the help of a prominent Jewish rabbi. The Diocesan Council of the Episcopal Church also took official action. With this united church front, the measure won in 1927.

In North Carolina the ministerial associations of 4 counties held a special meeting in 1927 to discuss proposed changes in the state's marriage laws. In the same year a state-wide conference on problems of marriage and divorce was held at Columbus, Ohio, under the auspices of the Ohio Council of Churches. In Indiana a special committee was named by the Methodist Episcopal Church to obtain the co-operation of other bodies in drafting and presenting a better marriage measure to the Indiana legislature. These are only straws in the wind as yet, but, in so far as the churches learn—instead of attempting at any one time a whole program of untested provisions—to unite and address themselves to specific and practicable measures of reform, such as the abolition of child marriage, the elimination of marriage market towns, the disciplining of marrying parsons, and the wider adoption of advance notice, they are destined

to make an important contribution to marriage reform in this country.

The instances just cited illustrate for the most part attempts to improve legislation by interdenominational action. Sometimes, however, a group within a denomination—a minority group it may be—advocates legislative changes in marriage laws that are not endorsed by the whole of its own denomination or by any other. An example of this is the position taken by some members of the Church of England and by certain Episcopalians in the United States who feel that, following the usual continental system, a civil ceremony should be the only marriage solemnization required by law. A religious ceremony might be performed in addition for those who wish the blessing of the Church upon their union. To such a change in the law of our country there seems to be a fundamental objection. At present, many persons who have lost active church connections turn, nevertheless, to the Church when certain great events occur in their lives. Marriage is one of these, and a conscientious minister of religion, through the opportunity he has for conference with such persons, is in a position to be of influence spiritually. Not only may this most important event be surrounded with fitting and uplifting conditions, but false steps may be avoided through his counsel. If, however, the alternative choice of a religious or a civil ceremony that now prevails in this country were done away with and the religious ceremony were left with

no legal standing, many persons who now by preference are married by clergymen might be unwilling or unable to have both kinds of ceremony, and, therefore, would be married only by the obligatory civil forms. It does not seem wise thus to discourage a relationship which might be made of positive value in the after-lives of the people concerned. On the other hand, the unhappy situations described in this book would be in no wise improved by the proposed elimination of the Church from its present legal responsibility in so important a matter as the solemnization of marriage.

In 1924 the Conference on Christian Politics, Economics, and Citizenship was held at Birmingham, England. As an illustration of group co-operation, interdenominational in its personnel but committing its members in their individual capacity only, one of the reports of that conference presents such interesting features that some account of the relation of the Conference to the subject of marriage may well close this chapter. The basis of Copec, as the Conference was called, was "no treatment without diagnosis." Twelve commissions were created 4 years before the Conference was held, the membership of which included men and women with special knowledge of the 12 separate topics assigned to them but holding different views with regard to them. One of these topics was the relation of the sexes.[1] The report on this subject

[1] The Relation of the Sexes. C.O.P.E.C. Commission Report. Longmans, Green and Co., London, 1924.

was prepared by 20 persons, 10 of whom were women. Professor W. F. Lofthouse of Wesleyan College at Birmingham, the author of an important book, Ethics and the Family, was chairman. Three of the Commission were rectors in the Church of England, 5 were clergymen of other denominations, 2 women members belonged to the Society of Friends, 4 represented social welfare work among women and girls, 3 members were physicians, 3 were college professors, one was a member of a board of guardians. At least 4 of the number were authors of books closely related to the Commission's subject of study, and the group as a whole was a distinguished one. It was understood that if, after examining the returns made by small conference groups that had been organized and supplied with questionnaires throughout the United Kingdom, the members of the Commission "were led to agreement, that was recorded. If they found that after all their thinking they still differed, then the differences were recorded."[1]

The membership of the Commission on Relation of the Sexes differed on two subjects—birth control and divorce. A plain statement of the alternative views held by those who divided on these important questions was incorporated in the body of their report. A few sentences reproduced from different parts of the report will show what its main positions were on matters concerning which there was agreement:

[1] Shillito, Edward: Christian Citizenship. Longmans, Green and Co., London, 1924, p. 10.

It is far more important that the Church should pay attention to preventing marriage from being a failure than to deciding what to do with it when it has become a failure.[1]

Where there is no true preparation, the marriage service loses its meaning, and may even deceive the parties into thinking all is well. Under such circumstances it would not be unreasonable in the Church to decline to conduct a marriage service. For the Church cannot assure people that they are entering on a life of united bliss if the seeds of bliss have not been truly planted; nor is there any promise that they will avoid the harvest of disaster if, in the union which the Church declares to be a consecrated union, the seeds of disaster are already observable, and if the persons are unaware of them, or have taken no precautions against their growth.[2]

Some scheme should exist by which, in the pastoral work of the Church and the ministry, married couples, and especially young married couples, should be provided with the wise help in the maintenance of marriage that they may need. And if the Church is to render her due service to society as a whole, some provision should be made by which members of the Church could find ways of giving counsel and help to persons outside the Church before and after marriage.[3]

It is not within the scope of this volume to consider the insights and services that might be most helpful to young married people in the first years of their life together, but on pages 142 to 148 of the report of this Commission will be found some valuable suggestions on that most important aspect of the subject. Our attention must be confined here to the standards of the churches and the standards of individual clergymen in celebrating marriages.

[1] Proceedings of C.O.P.E.C. Longmans, Green and Co., London, 1924, p. 110.

[2] The Relation of the Sexes, pp. 139–140. [3] *Ibid.*, p. 185.

CHAPTER XII

THE STANDARDS OF INDIVIDUAL CLERGYMEN

A NUMBER of clergymen of different denominations have been good enough to explain to us in interviews or more often by correspondence their individual plans for marriage ceremonies. Before describing these, however, it will be well to inquire what rules have been formulated by the states for the solemnization of marriages, and what responsibilities are placed by state laws upon the shoulders of all ministers of religion when they act as marriage celebrants.

The legal processes for sanctioning a marriage begin with a license issued by the state to be followed by a civil or a religious ceremony. Either the one or the other is necessary to constitute a valid contractual marriage save in 2 of our states where a religious ceremony is the only one recognized by law. Before our present licensing system came into full effect, it was the responsibility of the officiating minister to ascertain the qualifications of candidates for matrimony and assure himself that these qualifications met the requirements of law. This obligation now rests in most states upon both license issuer and minister. Possibly a division of the duty has tended

to weaken, to some extent at least, the church's sense of responsibility for marriage. It is not always fully realized now that the minister who solemnizes a marriage in the United States acts not only as one who bestows the blessing of the church upon a wedded pair with all that this responsibility implies, but that he also acts as the representative of the state, charged by it with certain duties for the proper fulfilment of which he should be thoroughly familiar with the state's marriage laws.

Those laws do not interfere with his right to refuse to officiate at a marriage until he is satisfied that the conditions in the given circumstances meet not only the standards of the state but his own and his church's standards as well. There would seem to be some confusion of thought about this, though many ministers are fully aware of it and are now applying standards higher in certain particulars than the civil law requires. They act within their rights in so doing.

Provisions vary from state to state. In 12 states a minister can be punished for performing a marriage ceremony when the marriage is actually illegal; in 2 he must examine candidates to make sure that the marriage is legal, or he must ascertain that fact; in 5 he must satisfy himself on certain specified points before performing the ceremony;[1] in 22 states he

[1] These 5 have the most specific provisions. In California he must satisfy himself of the correctness of the assertions of candidates if he has any reason to doubt them. In Minnesota he shall not act unless satisfied that there is no legal impediment, and may examine candidates

must refuse to officiate if he knows that the marriage is illegal in any one of several specified particulars; in 4 states this refusal is required not only when he *knows* of the illegality, but "has good reason to believe" that it would be illegal in any one of several particulars; in 2 states the celebrant must refuse to officiate if lawful objection is made to the ceremony; in one state he *may* examine candidates as to their qualifications; and in 4 states and the District of Columbia there are no provisions of any kind that can serve as guides to a minister in the discharge of this function.[1]

Cook believes that every religious celebrant should, before acting in that capacity, present to the civil authorities proof of his ordination.[2] It has also been suggested that he should still be in the active exercise of ministerial duties and should be disqualified to officiate after retirement.

But the positive aspects of this part of our subject concern us far more than the negative. What positive rules for personal guidance have ministers of religion worked out from their own experience?

under oath as to the legality of a marriage. In Wisconsin he shall satisfy himself as to the identity of the candidates. The clumsily worded New Mexico law declares, "Nothing in this chapter shall excuse any person from exercising the same care . . . in satisfying himself as to the legal qualifications of [candidates] in addition to the authority conferred by the license." In South Dakota the celebrant must ascertain to his satisfaction the identity of candidates, their names and ages, and whether they are of sufficient age.

[1] Four states are counted twice in this classification. Their provisions appear in two different categories.

[2] Cook, "Reform in the Celebration of Marriage," in the *Atlantic Monthly*, Vol. 61, May, 1888, p. 684.

I. RULES FOR PERSONAL GUIDANCE

The rule most often reported to us by clergymen is their pledge to themselves that they will not marry persons totally unknown to them. The testimony of witnesses, however, who know the bride and bridegroom and are themselves known by the celebrant to be trustworthy people is usually regarded as a satisfactory substitute. One Protestant Episcopal minister has adopted what he calls a Rule of Three. This is

First. Proof that the candidates have known each other for at least three months.

Second. The presence of witnesses personally acquainted with the bride and bridegroom.

Third. A certificate from the family physician, showing the bridegroom to be physically fit.

He writes that he has found greater approval of these rules among the laity than among the clergy. Another clergyman belonging to the same denomination reports:

I do not officiate at a marriage when the contracting parties are unknown to me, unless these persons are vouched for by someone whose judgment I can trust. I try to impress upon my people the fact that I desire to marry only those persons who are members of my own congregation. I am of the opinion that it would be a wise rule for every minister to follow—to officiate only among his own people. The chief problem that we clergymen should give our attention to is not stopping divorces and refusing to marry divorced persons but to getting at the other end of the relationship. We must stop marrying persons promiscuously.

Much the same position is taken by Rev. William C. De Witt, President of the Western Theological Seminary of the Protestant Episcopal Church.[1] He feels it is a good rule not to solemnize marriage between persons who are neither known to the celebrant nor commended by witnesses that he knows. In a volume of pastoral suggestions, President De Witt also recommends, as wholesome checks upon hasty marriage, the revival of two ancient customs—the espousals or formal betrothal, and the publication of the banns.[2] The license, in his opinion, should be delivered to the celebrant some time before the time set for the wedding. Blank forms are suggested —one for the bridegroom and one for the bride—upon which the celebrant sets down the facts that he feels it may be necessary for him to know. Most of the items relate to baptism, confirmation, communion, and the type of service desired.[3] Though in the case of persons already known to the officiating clergyman such a form would probably be sufficient, it would not suffice for the many persons with no established church connection who are desirous of having a church ceremony and a religious celebrant when they marry. We venture, therefore, as a tentative suggestion to be modified in accordance with the requirements of different religious bodies and individual

[1] De Witt, Rev. William C., S.T.D.: Decently and in Order. Morehouse Publishing Co., Milwaukee, 1914, p. 127.

[2] On the subject of the banns, however, see Chapter VIII, Clandestine Marriages, p. 116.

[3] See Decently and in Order, pp. 126 and 321.

churches, to advocate the use of the form shown on the two following pages for an interview with the bridegroom. The necessary modifications for a form to be used in a separate interview with the bride are so obvious that they are not given.

Not all of these items will have to be filled out for every wedding. If the candidates are well known to the minister some will be unnecessary; but the whole form might well be used with candidates who are known only by introduction. A separate interview with each of the candidates will often bring out facts and points of view that the celebrant should know. Then a comparison of the data gathered on the 2 forms is important, in order to discover and reconcile any inconsistencies between them. Again, a comparison of both statements with the items recorded on the marriage license may also show discrepancies and render further questioning necessary. In case there has been deliberate misrepresentation, the celebrant who follows this procedure is in a position to save two people from a serious misstep.

A Jewish rabbi tells us that he always questions candidates for marriage in this way, though without the use of a blank form. Sometimes, in the endeavor of such candidates to conceal a disqualification, the statements of the two conflict, or else they have forgotten what they told the license official and tell the rabbi a different story.

Mention has already been made of the procedure laid down by the Catholic Church for the investiga-

MINISTER'S RECORD OF APPLICATION FOR MARRIAGE CEREMONY—BRIDEGROOM[1]

If both candidates are unknown to the minister, the bridegroom was introduced by

.....

Address.....

Who has known him for.....years.....months.

1. Full legal name of bridegroom.....Age.....

   Present residence (how long and address in full).....

   .....

   Names and addresses of persons who can verify present residence.....

   .....

2. Date and place of birth (give month, day, year).....

   .....

3. Father's full name (address in full if living).....

   .....

   Mother's maiden name (address if different).....

   .....

   Proof of parental consent given to marriage, if either candidate is under the age of 23[2].....

   .....

   Or reasons for withholding parental consent.....

   .....

4. Occupation.....

   Employer's address.....

5. Physical condition.....

[1] A similar but somewhat modified form printed on paper of a different color should be filled out separately for the bride, who should be interviewed separately.

[2] See p. 269.

.....

Name and address of physician.....

6. If ever previously married, how many times.....

How was each marriage terminated.....

.....

If by death, give date and place of wife's decease.....

If by divorce or annulment, date.....place.....

court.....name of petitioner.....ground...

7. Name of prospective bride.....Age.....

If she has previously been married, answer as under (6).....

.....

Any relationship to her (by blood or by marriage).....

.....

How long have the two candidates for marriage known each other.....

Place of proposed residence.....

8. Name and location of the church, if any, of which each candidate is a member or which each attends most regularly....

.....

.....

9. Witnesses to the ceremony with length of time they have known each candidate.

.....Address.....

.....Address.....

.....Address.....

10. Arrangements for ceremony, music, rehearsal, etc.

Date of Application

_____

(signed)_____

Religious Celebrant

tion of candidates before the ceremony.[1] A Presbyterian pastor who recognizes a special responsibility for the young people of his church writes to us,

> When I can get the confidence of the girls who belong to my church, I can very easily investigate their engagements and have conferences with them and their fiancés, and can lead them out of difficulties. In many instances, when consulted, I have been able to prevent the marriage when the young man was of an unsavory character. I have sent for him and frankly told him; or, I have sent for the girl's parents and sometimes the boy's parents and have thereby been able to convince the parties involved of the unwisdom of their proposed step and have saved them much sorrow and trouble.

This may seem to place upon the minister an obligation belonging to parents. But parents are not always fitted to discharge this duty. Now that religion and medicine are drawing nearer together in the healing of sick souls and bodies, it might not be amiss for clergyman and physician to form a somewhat closer alliance in deciding what their attitude should be toward a given marriage. Each could help the other to a better procedure than we now have where advice to those about to marry appears to be necessary.

Some of our clerical correspondents have given details of their method of dealing with such impediments as under age, bigamy, physical or mental defect, and intemperance. In one case, already cited, we have seen how a Catholic priest refused without the consent of a girl's parents to marry her at the age

[1] In the preceding chapter, p. 246.

of 15 to a college student, who later in the same day induced a justice of the peace to unite them.[1] Similarly we have found at least one Jewish rabbi and one Episcopal rector who demand proof at first hand of parental consent. They insist upon communicating in some way with the parents whenever candidates claim to be under 23 years of age; for it is notorious that those who are trying to evade the law's parental consent requirement often give ages *over* majority when they are still under age.

Bigamy is a crime easily concealed at the time it is committed. Discovery, when it comes at all, usually comes too late. This is an excellent reason for discouraging out-of-town and out-of-state marriages, and for requiring the presence at weddings of witnesses known by the celebrant to be responsible persons acquainted with the bride and bridegroom.

In Massachusetts, the caution of a Catholic priest prevented a marriage that would have been bigamous. The two candidates had filed notice of intention to marry with the license issuer in due form. Before the wedding day, however, the priest received intimations that caused him to look up the record of the man concerned, and in a neighboring town he found a record that there had been a marriage 3 years before and that the wife was in all probability still living and certainly not divorced. At the priest's suggestion a police inspector confronted the bridegroom just before the ceremony that was to have been performed and got a confession from him. The punishment was a light one—30 days imprisonment for falsifying his status on the notice of intention to marry.

[1] Chapter VI, Youthful and Child Marriages, p. 126.

In the same state, a priest refused to solemnize a marriage because he suspected but was not able to prove at the time that the prospective bridegroom had a wife in the old country. The pair succeeded in finding a civil celebrant who married them without the priest's knowledge. Six months later he received a reply from abroad that confirmed his suspicions.

The clergyman who knows family history is often in a position to prevent the transmission of defect or disease by speaking a word in time.

A young woman, accompanied by her employer, called upon her pastor to learn what he knew about the man she had promised to marry. He informed her that one brother was feeble-minded, one had become insane, and that two of the family were cripples from birth. It is true that this minister was sued for slander when the engagement was broken, but a jury returned a verdict in his favor.

There are few more useful services today than to prevent disastrous marriages, unless it be to help young married people to make their marriages a success.

II. SOCIAL DISABILITIES UNRECOGNIZED

It often happens, however, that ministers of excellent standing in their several communities—some in charge of large congregations, some in less conspicuous positions—are blind to obvious social disabilities that ought to bring a refusal to officiate from any thoughtful person. The unrecognized or else the ignored disabilities that we noted among the religious ceremonies reported in the course of our field work

were (1) age falsification; (2) lack of parental consent; (3) physical disability; (4) intemperance; (5) undue pressure or duress.

In this group of disabilities, cases of age falsification, some of them accompanied by lack of parental consent, were most numerous. License issuers should be vigilant, but the whole responsibility for testing age qualifications cannot be placed upon their shoulders. A minister who takes the opposite view, however, writes to us,

> I would suggest this: That when a young couple present themselves before the county auditor or his deputy for a marriage license that said auditor, or his deputy, secure the names and addresses of parents or guardians of bride and groom, and that he be required to delay issuance of said license until he shall communicate by phone, letter, or personally with such parents or guardians of such bride and groom and that cost of such interview, however had, be added to the cost of license. That this apply to all parties applying for marriage licenses whose appearance would suggest the slightest likelihood of being under age.

But this very procedure or a portion of it, if it had been followed by the minister who wrote the foregoing, would have saved him from marrying a runaway pair who had appeared before him with a license and with witnesses. The experience opened his eyes to the license issuer's shortcomings but apparently not to his own. The two principals in the case referred to and some of their witnesses had given false names at the license office, and they had great difficulty in remembering these when they faced the

minister. His suspicions were aroused and yet he performed the ceremony. The bride and bridegroom, who were really 17 and 19 years old, also gave false ages. Later, they were found to be in such a diseased condition that the public authorities, who had taken them into custody on a charge of perjury, placed them under the care of the county physician until cured.

Even more striking is the following instance:

A clergyman, a man holding an important place in his community and his church, officiated at the marriage of a girl of 14 without consulting her parents who lived three doors away from his parsonage. The girl was a member of his own Sunday school, but came to the parsonage supplied with a marriage license that gave her age as 18. An examination of court records shows that this marriage was annulled. Annulments are often included in divorce returns, and it is a possibility that the very minister here referred to was one who deplored the mounting divorce rate and wondered when it would begin to diminish.

Other instances in which the absence of parental consent was ignored by the officiating clergyman are the following:

A girl only a month over 13 who claimed, however, to be 18, was married at a church wedding to a man of 22 with whom she had eloped. The wedding took place without the knowledge of her parents.

A girl of 15, who ran away from her home in Minnesota after stealing $100 from a relative, was married in an eastern city to a comparative stranger after claiming to the priest who officiated that she was from California. The priest of her home parish was never communicated with and her parents, of course, were ignorant of the marriage.

Another girl of 15, an orphan, who gave a false name and represented herself as 18 years old, was married without the consent of her guardian to an ex-convict. A Protestant minister officiated.

A wayward girl of 17, inmate of a reform school, and a boy of 14 procured a marriage license on their affidavit that they were 18 and 21 respectively. Both children were Catholics. The superintendent of the reform school wrote, "The distressing fact is that two Catholics of these young ages can secure a license and present the same at 10 p. m. to a Presbyterian minister and be married by him."

When two strangers, one of them a girl of 17, applied to a minister and he married the pair in his study, he is known to have examined their marriage license, but unfortunately he failed to ask why the girl's parents were not present at the ceremony. A few days later the girl's family discovered facts about her husband that seemed to them to justify an application for annulment of the marriage. The judge who granted this annulment writes as follows:

"I believe thoroughly that any person who has the right to perform a marriage ceremony in the event of a young girl's appearing before him, and it is shown by the marriage license that she has parents who are not there, should ask questions as to the reason for their absence; a minister who fails to do this is not fit for such service, nor is a magistrate."

A few cases of religious marriage ceremonies performed for girls as young as 11, 12, and 13 also appear in our files, though in these particular cases the parents were even more culpable than were the officiating clergymen, for the parents had actually arranged the marriages.

As regards the dangers of hereditary defect and of transmissible or disabling disease we know of very few

cases in which ministers have been involved. Sometimes they have joined a feeble-minded girl of 14 or 16 in marriage to a ne'er-do-weel and have been without the slender excuse that the parents of the child consented, but more often, in the cases known to us, these defectives were married by civil ceremony. An inherited defect is not, however, the only physical or mental disability to be guarded against.

One marriage performed by a clergyman had to be annulled because it was proved to the satisfaction of the court by the testimony of the bride's physician and relatives that she was suffering from sleeping sickness at the time and that her husband knew her to be mentally incompetent. The husband had disappeared long before the court hearing.

Court records of annulment cases sometimes contain revealing testimony from the ministers who officiated at the marriages involved. Such testimony throws light, for example, on the sobriety of the principals. Take the following, a court reporter's summary of the officiating minister's testimony in an annulment case:

The Reverend ——— ——— stated the parties and another man and his wife got him out of bed after 11 o'clock p. m. He noticed the men had been drinking; their breaths showed that fact. He said they did not seem to take the matter seriously; that she seemed to be a good girl in bad company temporarily. He further said that partly on account of her having seemingly been drinking, and partly on account of having been worked over or influenced by the rest of the party she consented, but that the influence and her condition together were such that she was not capable of realizing full well what she was doing. . . . He

does not state that she was intoxicated. The most his testimony would show was that the men showed marked evidence of having been drinking, and the laughing and light manner in which the matter was treated by the women, as well as the men, caused Mr. ———— to conclude the women had been drinking.

In another case brought to our attention, a clergyman married two candidates after two other ministers had refused, within the hour, to perform the ceremony, and had based their refusal on the fact that the prospective groom obviously was drunk.

Marriage through fear of violence or owing to undue pressure is seldom mentioned in data bearing upon religious ceremonies. We do find a court record, however, in which it appears that a minister performed a marriage ceremony after he had been told by the bride, a young girl, that she did not wish to marry. During the ceremony she hesitated to say "yes" until a look from her father impelled her to assent. Immediately after the ceremony she refused to kiss the bridegroom and declared that she did not regard herself as his wife. As a matter of fact, the pair never lived together.

All of the candidates for matrimony mentioned in these illustrations were disqualified by law. They all had marriage licenses, however, and it may be that the ministers concerned felt that the license freed them from responsibility, just as license issuers themselves sometimes feel freed when they file a candidate's affidavit and remark, "That lets me out." But we have seen at the beginning of this chapter that most state laws are not capable of this interpre-

tation. The minister really shares legal responsibility with the license issuer.

Again, ministers of religion have been known to contend that if they do not marry candidates at once as soon as they apply, someone else—a justice of the peace perhaps—will do so. But this belongs to the type of reasoning that could block any chance of reform. It completes a vicious circle of irresponsibilities.

Finally, the defense is often made that the particular case under consideration was exceptional. Application was made, possibly, late in the evening, and there was no time to make inquiry about the two strangers who wished to be made man and wife. A doctor of wide experience says that not one in 10 of the emergency calls that come to him are really emergent at all. This is equally true of the emergency calls that come to the religious celebrant when he is urged to solemnize marriages without delay. Those who would evade the law or have something to conceal appear at unreasonable hours and demand immediate action. We have discussed this subject in its relation to license issuance,[1] but it deserves an additional word here for the reason that the minister feels under greater obligation than does the license issuer to save human beings from the dangers of an immoral relationship. But within the marriage bond itself there can be immoral relations. If conditions precedent to marriage and still existing at that time

[1] Chapter VII, Hasty Marriages, pp. 162–164.

are radically wrong, the form of words does not constitute a true marriage. The words bless and give public recognition and sanction to conditions that are worthy of a blessing and to no others. Both church and state accept this fact in specifying certain minimum requirements that should be met before a marriage contract can be regarded as without serious impediment. Where these requirements are lacking, immorality is not prevented by a religious ceremony. The celebrant should be able to assure himself that these minimum requirements have been met. There is just one exception recognized by ecclesiastical law and by civil custom, and that is danger of death. Here haste may be fully justified provided the celebrant is sure that danger of death exists.

To state in even briefer form the main points bearing upon an individual minister's relation to the marriage ceremony: He will not, save where danger of death or some other emergency equally grave exists, allow himself to be hurried into final action. The marriage license should be in his hands several days before the time of the wedding. Usually, the preliminary interviews should come even earlier than this. The statements made in these interviews, held separately with the man and the woman concerned, should be compared with the statements of the license. The use of a blank form facilitates such comparisons. When either candidate appears to be below the age at which parental consent can be legally dispensed with, first of all proof of age should

be demanded, and next conclusive evidence of parental consent, whenever such consent is found to be necessary. For those only a little above the parental consent ages, parental objections, when there are any, may have to be weighed but they are not necessarily to be regarded as final. Applications from both young people and adults who are seeking to be married in a place where they are quite unknown should receive special scrutiny. Inherited disease or defect, intemperate habits, slight acquaintance between a pair who may have made up their minds to marry on the spur of the moment, are all things to be borne in mind.

Moreover, it is natural enough that a minister who has, in preliminary interviews and at the ceremony, felt and shown a genuine interest in the fortunes of the two about to become husband and wife, should be turned to later during the two or three difficult years of adjustment that usually follow. Complications often develop then that are best untangled with the help of a disinterested, clear-headed, and sympathetic third person. By virtue of his office the minister often has an opportunity to render this most valuable service, and he becomes the best of advisers when his own experience has been enriched by many such confidences and contacts. Taking then the logical next step, he is impelled by his knowledge of what is happening to unite himself with his fellows inside and outside his own denomination and to urge reforms in marriage procedure not only on the part

of the church but of the state as well. He becomes interested in better state laws, better marriage law administration, better instruction in the theological seminaries on the relation of the sexes and on the duties of religious celebrants. He is also ready to urge that the churches deal more promptly and more effectively with the commercial practices of the marrying parson. These are now to be described very briefly.

CHAPTER XIII

THE MARRYING PARSON

WHEN does a religious celebrant become a marrying parson? In time, the churches will give their own answer to this question; when given, it will be the authoritative answer. The only distinction attempted here is a very simple one. Where we have found the same commercial practices among certain ordained ministers that we have found and already described as characteristic of certain civil officiants, there we have felt justified in assuming that these individual clergymen were marrying parsons. Marrying justices sometimes attempt to defend—they do defend, in fact—the worst of their own practices by declaring that these are quite as good as the practices of some of the preachers.

But only a small minority among ministers of religion can be charged with commercialism, while many of the justices have allowed their eagerness for marriage fees, however earned, to become notorious. The difficulty is that, though few ministers are commercializing marriage ceremonies, the few who do are performing far more than their proportional share of such ceremonies.

When a bishop, referring to a clergyman in his denomination who has no church and no parishioners,

must acknowledge ruefully, "I suppose it is true that he has married more than three thousand couples"; when another minister without a charge is shown by our examination of records at the license office to have officiated in 76 out of 96 consecutive marriages; when still another—with a charge this time—had to leave town suddenly to escape arrest for performing ceremonies illegally, it seems reasonable to draw again an inference that has often been drawn before; namely, that the churches have a certain responsibility for the existence of the marrying parson.

It is true that this type of celebrant is most in evidence in marriage market towns, especially in those in which no civil marriage ceremony is permitted by law, but the marrying parson's operations are not confined to these places, and in the examples of commercial practices here given these towns are not featured.

I. COMMERCIAL PRACTICES

The forms of clerical commercialism that have come to our attention are, as just stated, much the same as those already noted in connection with civil ceremonies. They include such practices as offering co-operative license clerks a share of the marriage fee; leaving a package of the minister's cards with the clerk to be handed to candidates for matrimony; maintaining a desk in the marriage license office and selling marriage certificates there that are designed for framing; maintaining a room or establishing a

place of residence very near the court house; putting conspicuous signs outside this residence; employing runners or else personally soliciting patronage from strangers; dividing fees with taxicab drivers who bring candidates to be married; and helping those who apply to be married to evade the marriage laws of their state.

A former marriage license clerk on the Pacific coast describes his plan of helping retired and needy clergymen by sending license holders to them for the marriage ceremony. One minister so favored was able at the end of 4 years to purchase a small ranch with his fees. Two other clergymen had offered to share with this clerk all fees received from candidates sent by him.

Under another former license official in a large city of the Middle West a certain clergyman was allowed to perform ceremonies in the license office, and had a desk there where he sold unofficial marriage certificates suitable for framing.

An officiant who formerly had been a circuit preacher established himself regularly in an unoccupied space at the court house of his home town in Iowa. His procedures led to a protest on the part of the local Ministerial Association, and the court-house authorities ordered him out. Later, he engaged quarters in a building directly opposite, where he tried to arrange with some of the other tenants to let him call upon them to act as needed witnesses at marriage ceremonies.

A minister, after his retirement from active service, bought a house directly opposite one of the marriage license offices in a northwestern state and decorated this home with 3 signs. Two were hung at opposite ends of his front porch; the third was on a post in the center of his lawn. He complained to us that too many other ministers had now moved into the same neighborhood in order to avail themselves of the opportunity to perform marriage ceremonies.

In a Pacific coast city, one of the retired clergymen used to advertise in the telephone book that he would celebrate secret marriages. He also displayed a sign on his house, "Marriages, $2.00." A wedding march was played so continuously upon his phonograph that the judge in the neighboring court house entered a complaint. This marrying parson has since left town.

An evangelist in a southern city was interviewed as he loitered about the court house. If the people coming there looked at all like applicants for marriage licenses, he accosted them, explaining that he was a minister and would be glad to serve them. He spoke to us with indignation of one man who, after promising to come back to him for the ceremony, had applied to a Catholic priest instead. One candidate from the country had said that he preferred to have a justice of the peace officiate because a gold seal would be affixed to his marriage certificate by the justice; but this minister assured him that he was willing and able to do as much and more. Some candidates he married at his home, some in the record room of the court house, or in any other part of the building not in use. Of 97 consecutive marriage records of white candidates examined in the license office, this minister was entered as celebrant of the marriage in 32.

The habit of splitting fees with taxicab drivers is especially characteristic of certain of the ministers in marriage market towns. As some of the more notorious of such places have been described, this and the other practices of marrying parsons who reside there will not be dwelt upon.[1] There should be added, however, two examples of the ingenious attempts made by such parsons to overcome a legal provision or else to evade it. Neither one of these comes to us from a marriage market town:

[1] Chapter IV, Exploitation, p. 90.

A California clergyman who boasted to us that he had performed 247 marriage ceremonies the year before, but that only about 15 of these were for members of his parish, related one instance in which he had crossed the border into Mexico with a pair and had married them there because he had learned that the bride had not yet obtained a divorce from her husband. A lawyer had declared that a marriage in Mexico would be legal under the circumstances.

A Protestant clergyman in an eastern seaport announced with some pride to our field agent that he was the marrying parson of the place. Most of the people he united in matrimony were not affiliated with any church, but, as he married more Catholics than Protestants, he was known far and wide as "the priest of Thunderbolt Hill." On one occasion, when he found that the license presented to him allowed the marriage to take place in another and adjoining township only, he explained to the pair concerned that he was willing to marry them there in a taxicab or on somebody's porch. They chose the porch, and a storekeeper across the township line granted them the use of one for the purpose.

One form of evasion has come to our attention a number of times. It consists of misdating the marriage certificate at the request of the marrying pair by entering upon it either an earlier or a later date than the true one. DeWitt Talmage wrote of this practice many years ago,

Let ministers and officers of the law decline officiating at clandestine marriages. When they are asked to date a marriage certificate back, as we all are asked, let them peremptorily decline to say that the ceremony was in November instead of January, or decline to leave the date blank, lest others fill out the record erroneously.[1]

[1] Talmage, Rev. DeWitt: The Marriage Ring. Funk and Wagnalls, New York, 1886, p. 44.

There are two situations in which people may be justified in seeking to avoid publicity for the date of their marriage and in wishing that the date were earlier. These two involve cases of pre-matrimonial pregnancy and cases in which the pair have lived together and have been assumed by their neighbors to be married. We have discussed both situations in another chapter.[1] Though it is desirable in both that publicity be avoided, this does not justify a falsification of the record. When, on the other hand, candidates ask to have their certificates dated ahead, they do this in order to evade a law which in some states calls for an interval between the issuance of the license and the marriage. There is even less justification for a desire to evade this type of law, and falsification of the date is, in any case, an illegal act.

Where ministers who have retired from service drift into practicing any of the forms of commercialism thus far described, it is a question for the churches to decide whether these men are not partially excused, perhaps, by the lack of proper provision for superannuated clergymen. Even in the case of ministers still in active service it would appear that their congregations are sometimes ready to count upon marriage fees to supplement an inadequate salary. One minister, who advocates dispensing with the marriage fee altogether, wrote to us as follows:

[1] Chapter VIII, Clandestine Marriages, pp. 168–170.

There is an important economic reason why I am opposed to fees. I refer to the tendency to appeal to fees in defense of the shamefully low salaries paid to ministers. It is not unusual to hear the watchdogs of the church exchequer argue, "True, we do not pay him very much, but think of the fees he gets!" Which reminds me of the "big tips" calculation of the employer of summer hotel labor. As my individual contribution toward the correction of the economic status of the ministry, I feel that I ought to repudiate all fees.

Whatever may be the decision of the individual minister of religion, it is impossible to feel, while respecting the motives of those who refuse marriage fees, that the fee is the chief cause, or (save in the case of the marrying parson) a cause at all of lax standards in the religious celebration of marriages. The trouble lies deeper in the lack of understanding on the part of many ministers of the positive content of marriage and of the celebrant's relation to those who seek from him this service. There is a wonderful opportunity to serve society at this strategic point. The ministry's true part in making marriage a greater success than it now is demands closer study than we are competent to give it, but it is evident that the mere avoidance of commercial practices is not enough. In fact, a minister's failure even to recognize the outstanding social disqualifications of candidates who present themselves for the marriage ceremony will come in time, we believe, to be regarded by the churches as unfitting a man for the ministry.

II. UNSEEMLY SURROUNDINGS

It is something more than a foolish convention, surely, which requires that the procedures incident to a marriage ceremony be conducted "decently and in order." Whether failure to understand and live up to this standard is a mark of commercialism on the part of an officiating minister or whether it means nothing worse than bad taste would be difficult to say; but it is encouraging to find that a few ministerial associations are now trying to organize a united attack by many denominations upon what they term "religious rites as publicity stunts." They note that "there is growing up a custom of promoting a public marriage ceremony in connection with festivals, carnivals, and different kinds of shows. The obvious purpose of these events is to draw a crowd and increase attendance at amusement and entertainment projects." They urge ministers everywhere to refuse to lend themselves to such schemes.[1]

We have mentioned such public marriages as these under the heading of Exploitation. Business shows, radio expositions, department store broadcasting stations, food shows, entertainments for the benefit of a "worthy charity," and police athletic meets are all guilty. Their promoters seem to have little difficulty in finding ministers willing to take part in the functions thus arranged. In one town, for example, where prizes were offered by certain merchants for

[1] Leaflet prepared by the Minneapolis Council of Churches.

the first June bride, 5 ministers officiated at weddings celebrated simultaneously a minute after midnight on June 1st in the lobby of the court house.

Again, we find that some ministers are very careless as to where they conduct a marriage ceremony. A clergyman without a charge who is also an undertaker writes about ceremonies in his funeral parlors as follows:

> Yes I have performed many wedding ceremonies in these parlors which is like church parlors as it is a chapel. I have my downtown study at these parlors; have been a chaplain of this mortuary for thirty years and a manager, when any people cannot find me in one place they come here. We do things in ——— a little out of the ordinary. . . . I have married people more out of the ordinary than these parlors. I remain in the Master's Service.

Manifestly, the state as compared with the churches is relatively powerless in an attempt to deal with any such commercial or non-social practices as have been described in this chapter and the preceding one. The state cannot discriminate against any religious denomination whatsoever because it is small, or little known, or because it has no very strict rules concerning the qualifications of its clergy. The remedy must rest with those denominations that are jealous for the good name of all their accredited representatives, and with the church federations and ministerial associations of communities that are now facing these non-social attitudes toward marriage. The marrying parson is seldom disciplined at present by

the denominational body to which he belongs. We know of only one instance in which a clergyman has been unfrocked for his commercialization of the religious celebrant's function.

It is true, as we have been at pains to point out, that only a small minority of the clergy are marrying parsons, and that, considered as a whole, ministers of religion have shown far more conscience in their attitudes toward marriage than have the civil officiants encountered in this study. But unfortunately, though only a minority of ministers are conspicuously careless, those who belong to that minority are performing, as already indicated, far more than their due share of marriage ceremonies.

One thing is certain. When the churches begin to deal more thoroughly not only with the marrying parson but with the other social considerations relating to marriage, they will be the most powerful and most beneficent single factor in bringing about the reforms in procedure advocated in this book.

PART IV
SUPERVISION AND ENFORCEMENT

CHAPTER XIV

RECORDS AND PENALTIES

ONE OF the arguments against allowing common law marriage, as it is called, to circulate on a parity with licensed and ceremonial marriage is the fact that, under any such double standard, statutory law and its public administration can regulate the one and not the other. A common law marriage is an unlicensed and unrecorded marriage. It is an anachronism, as we have said before, that such marriages continue to be recognized in half of our states today. A further argument against them is this: a licensed marriage on the date of its celebration, or as soon thereafter as the required return is made to the license office, becomes a matter of permanent, official record, while a marriage based upon consent alone remains so nebulous, so confused and undocumented, that the courts of the very states that still grant recognition to it have difficulty in deciding what constitutes a common law marriage and what does not. The decisions of no two states are in entire agreement.

What are the practical advantages of a permanent record of every marriage made at the time it takes place, with the state as custodian of the record? In 1917, the Massachusetts Bureau of Vital Statistics

analyzed the advantages in terms of that state's own legal regulations. Details vary somewhat from state to state, but substantially they are in all the states much the same. According to the Massachusetts Bureau, permanent official records of marriages are needed:

1. As evidence of marriage, in order that a widow may obtain her lawful share of her husband's estate.

2. To prove legitimacy of heirs.

3. As evidence upon which to correct the marital condition of the deceased in a record of death.

4. As evidence of a mother's right to dependent aid.

5. As evidence upon which a widow may obtain compensation for the death of her husband, as provided by the Workmen's Compensation Act.

6. As evidence of the right of the widow of a soldier, sailor, policeman, or fireman to receive a pension from the federal or local government.

7. In proceedings for divorce or separation, the marriage of the complainant to the defendant must be established.

8. A record of a second marriage contracted while the first is yet undissolved is *prima facie* evidence upon which may be granted a decree of divorce of the first marriage.

9. As evidence of a previous marriage from which the defendant has not been released by divorce or death, in proceedings to annul a subsequent marriage.

10. As evidence of bigamy for the purpose of prosecution.

11. As evidence upon which to change the record of birth of an illegitimate child. It is customary when the parents of an illegitimate child subsequently marry to permit them to file a certificate of birth of such a child from which it shall appear that the child is legitimate—as it becomes after the marriage of its parents under the provisions of Revised Laws, chapter 133, section 5.[1]

[1] Seventy-sixth Annual Report on the Vital Statistics of Massachusetts for the year 1917. Commonwealth of Massachusetts, 1919, p. 47.

It is possible to establish the fact that a marriage ceremony has been performed without producing an official record, but the process is both difficult and expensive.

I. THE SOCIAL CONSEQUENCES OF INCOMPLETE MARRIAGE RETURNS

Responsibility for making to the license office a "return," as it is called, of every marriage solemnized rests upon the one who officiates at the marriage, with the exception that, in the case of members of religious bodies which dispense with a celebrant at the ceremony, there are several different ways provided for making the return, of which the best would seem to be the one that makes the clerk of the meeting or keeper of the records of the congregation responsible. Most states prescribe some penalty for failure on the part of the officiant to make this return within a stated period, varying from 3 days to 3 months. In 3 states—Maryland, Georgia, and Ohio —if the banns have been published no license need be required of the candidates, and the return with its necessary data is the sole responsibility of the religious celebrant of the marriage. Under these conditions, any failure on his part to make a return to the proper public official has all the possible disadvantages listed by Massachusetts, together with others more exclusively social in character. The license office is unable, of course, to follow up and complete the record of a marriage of which it has had no ad-

vance knowledge. This is all the more unfortunate in that, consciously or unconsciously, there sometimes appears to be a good deal of reluctance on the part of custodians of religious records to duplicate their church entries by forwarding a return to the strictly secular public office.[1] More and more they have learned to comply with this regulation, but tradition has a strong hold on some minds. For centuries the only parish records of births, deaths, and marriages were church records.

A widow with two children, who resides in New Jersey, applied there for a mother's allowance. She was required to supply a certified copy of her marriage certificate, and wrote to the license office in the state and town in which she had been married asking that this copy be forwarded to her. But it was found that no return of her marriage was on record. She then journeyed to the place herself, and gave the name of the priest who performed the ceremony and of the sexton who witnessed it. Neither priest nor sexton, however, could remember an event of many years before. Finally, the priest allowed the license issuer to search through the church records. In a large envelope containing baptismal records the state's license was found. No return had ever been made.

A deputy license official reports the difficulties in which he found himself about his own marriage. It was celebrated in a Nebraska town by an evangelist who did not reside there. Three months later, the bride and bridegroom, who had moved to another state, wished to sell a piece of property. The title guarantee company reported that the marriage was found to be unrecorded, and that no sale could be effected without a transcript of this record. After much trouble and considerable expense the evangelist was found in Mississippi. He had lost the license.

[1] See quotation from Gasparri on p. 246.

Another one had to be procured and forwarded to him for signature before the incident was closed.

Another license issuer in another state discovered, when he took up the duties of his office, that many licenses had been issued for which no marriage returns had ever been received. As two of these were cases in which he knew that the marriages had taken place, he wrote to all the candidates in the group and asked them to send him the names and addresses of their officiating celebrants. One priest, it was discovered, had solemnized 22 of these marriages; another, who had died since, had celebrated 11. The attorney general of the state ruled that the church records for such of these ceremonies as were entered on the church books only might not be accepted as legal records, but that unofficial copies could be filed with the license issuer.[1]

A news item from a Pennsylvania town reported the discovery by its marriage license issuer that, of 3600 licenses issued in the county during 1925, over 800 were unreturned in March, 1926. We wrote to the official concerned, who replied: "The facts set forth in the newspaper clipping are entirely correct. Since that time, however, we have received a large number of returns; for example, I have before me now eighteen returns from one Catholic priest in the city of ————, dating back as far as November, 1923. There is no doubt in my mind but that the newspaper article brought these returns to my office."

[1] With respect to the license issuer's duty to report such cases of neglect as these to the district attorney, see Chapter III, The License Issuer, pp. 73–74.

Disinclination or, more often, unintentional neglect on the part of religious celebrants to send marriage returns to the proper office within a reasonable time is not confined to them. Civil officiants are sometimes the offenders. One license issuer reports that the most careless officiant in his district is a judge of the superior court. On one occasion, when he filed several returns 8 or 9 months after the marriages had been solemnized, the issuer expostulated with him. There have been instances of the receipt of a return by this license office 5 years after the ceremony.

Such delay on the part of those who officiate at marriages suggests one of the reasons for a procedure now becoming quite common. This is a "follow up" sent from the license office after a given interval. Suggested forms to be used for this purpose will be found in an appendix,[1] but it should be noted here that an inquiry from the license office sent to the one performing the ceremony (when his identity is known) or to the candidates when no intended celebrant's name has been reported, serves several very useful purposes. If the candidates are notified that their marriage is not a matter of record, pressure is often brought to bear upon the delinquent officiant to make the public record complete. If, on the other hand, no marriage has taken place, that fact can be noted on the record. Such a follow-up of unreturned licenses is so important that it should be required by law. By the forms we suggest for applications for

[1] Appendix A, p. 355.

marriage licenses candidates are required, if possible, to state the name of the intended officiant. This not only facilitates follow-up procedures, but it makes unnecessary the law still in force in 12 states under which solemnization to be legal must take place in the district in which the license is issued. The latter requirement is a hindrance to persons who may quite properly wish to be married in a different district from the one in which they obtain their license.[1]

Why should the life of a license be limited? Such a limit is established by law in only 7 states at present, but a time limit makes it far easier for issuers to follow up missing returns on licenses and to secure the custody of any licenses still unused that might otherwise be put to illegitimate uses.

If a license has a time limit after the expiration of which, in case there has been no marriage ceremony, it ceases to be valid, there are advantages in making that limit a brief one—of not more than a month, say, or two months. Returns made promptly are doubly valuable. Where the legal requirement was for a return within one month, we found that more than 90 per cent of all the licenses recorded as issued had become complete marriage records within that period. Some of the remaining 10 per cent were accounted for by the fact that the candidates had changed their minds. Places requiring a return within 10 days made an even better showing. The record made promptly gains unquestionably in accuracy.

[1] See Chapter VIII, Clandestine Marriages, p. 185.

A follow-up within a short period would have saved in part, at least, some of the serious social complications that have been brought to our attention. Women from foreign countries and accustomed there to a compulsory civil marriage, to be followed or not as they may prefer by a religious ceremony, are easily confused by license issuance procedures that they sometimes mistake for a civil marriage. It follows that they think they are married when they are not. This fact was challenged in one city, but such misunderstandings had been reported in 19 of the cities visited by us. These 19 were in 11 different states. As our informants were persons thoroughly familiar with the circumstances, it seems reasonable to conclude that the situation is not a wholly uncommon one. Sometimes the man and woman involved are both misled; sometimes the man knows better and deceives the woman deliberately.

The license issuer in a California city reports an application for a marriage license from Tony C————, an Italian, and his wife. Both were known to the issuer as the parents of three children, the oldest of whom was 13 years old. When asked what he could want with a license, Tony explained that he had procured one many years before and that he and his wife always supposed they were married. But recently he had been told that a license was not enough.

A somewhat similar case was reported in Chicago. There the pair thought that the license was a marriage certificate; they had framed it and hung it on the wall. One day a neighbor who saw it told them of their mistake, and 17 years after it had been

issued the license was exchanged for a new one, preparatory to having a marriage ceremony performed.

A Norwegian woman came to this country years ago to marry her fiancé here. Twelve years later she advised a widow, a friend of hers in Norway, to come too. This widow brought two daughters with her, and the families combined their households. Soon, however, the husband of the first woman fell in love with one of the daughters of the widow. Thereupon he informed his wife that they were not married, that the document she had regarded as a marriage certificate was only a license.

An Italian woman in one of the New England states was deserted by her husband shortly before her first baby was born. A license had been taken out by the pair, but it transpired that there had been no marriage ceremony. The woman had been assured that in America the license was enough.

It might be claimed that if common law marriage had been recognized in the state issuing the license this deserter could have been extradited, provided he could have been found elsewhere, and that he could have been brought back and punished. But New York still has common law marriages, and in cases similar or even more serious—bigamy cases, for example—the authorities in that state have not been willing, as a rule, to get redress for a common law wife through extradition proceedings.

A prompt follow up of all licenses from the issuer's office gives the supposed wife definite knowledge of where she stands and gives it before she finds herself the mother of several children, perhaps, and relatively helpless. A group of cases has been reported to us in which women learned for the first time that

they were not married when they applied for an order to secure support from their husbands and were asked to bring a transcript of their marriage record from the license office. Similar discoveries have been made when women have sought an annulment of their marriage.

For reasons that are obvious enough and need not be dwelt upon here, the value of marriage records, like that of records of births and deaths, is greatly enhanced if copies are forwarded regularly to the State Bureau of Vital Statistics and are there kept in a permanent file. Seventeen states have no provision for centralized state registration of marriages at present.

II. BLANKS AND RECORD FORMS

We advocate in the next chapter special state supervision over all state functions relating to marriage, preferably in charge of a branch of the State Bureau of Vital Statistics. One of the duties of such a governmental office would be to provide proper blanks and forms for marriage license issuance and recording. In fact, good supervision is almost impossible without good record keeping. Many of the forms now in use are inadequate. Adopting the best features of these, however, and adding to them others that conform to the changes in legislation and administration advocated in these pages, we print a set of suggested forms in Appendix A.

Form A, the most important of these, is an applica-

tion for a marriage license. It should be made out in duplicate, and the original, which remains permanently in the license office, should have the fact of the marriage and certain other details endorsed upon it later. After all these entries have been made the duplicate should go for inspection and permanent filing to the state bureau supervising marriage license issuance.

This form and Form C, the marriage license, present the data about both applicants for a license in parallel columns. When both candidates live in the same marriage license district in the state, or when one or both of them live outside of the state, the one application form and the one license form, with the 2 columns filled out, serve for both the bride and the bridegroom. When they live in different license districts of the same state, 2 application forms and 2 license forms must be used, each having only one column filled out—one the column for the bride, the other the column for the bridegroom. In each case the name of the other partner to the marriage is filled in, in order that a license issued for marriage to one person may not be used for marriage to another.

Form B is a receipt to be handed to candidates when their application for a license is filed. It shows the number of their application. The applicant must after 5 days present this receipt to the license issuer in person or mail it to him. The license will then be issued if no valid objections have been made. A large receipt form, rather than the card now used in

some offices, is suggested in order that there may be room to print thereon a full summary of the marriage law requirements and the penalties for their violation, in so far as these concern candidates.

Form E is a return envelope addressed to the license issuer. In it he places the marriage license delivered to the candidates. The envelope bears on the outside, across its end, a warning to the officiant (or witnessing clerk of meeting, where the marriage is one without an officiant) that there must be a prompt certification, returned to the license office in this envelope, of the fact of the marriage.

We have seen that not all licenses are used, and that some candidates mistake a license for a marriage certificate. The difference is explained on the face of the proposed license, Form C. When the fact of a marriage is properly reported to the license office, the date on which the return is received should be entered at once in the space for it on Form A.

The other forms given in Appendix A, including those for follow-ups, are self-explanatory. Just a word should be added, however, about the importance of a system of prompt and accurate indexing under the names of both candidates. In some offices, indexing is many months behind; in others, only the husband's name is indexed. Where, therefore, a mistake has been made in spelling the husband's name, or where a false name has been given by the man, the wife whose name has never been indexed may find herself without any documentary evidence of her marriage.

III. PENALTIES

This study of marriage law administration draws near its close at a time when the country is beginning to awake to the necessity of better law enforcement as one of its outstanding needs. The American Bar Association recently devoted an important part of its annual meeting to the subject of enforcement; citizens have organized in different cities to study and report upon the causes and treatment of crime; state commissions have been appointed; one of the large law schools has launched a detailed study of the lower courts of its community. No one can anticipate the outcome of these activities, but from our own limited field of study we should expect it to center attention upon the punishment and prevention of so-called minor offenses. There is the possibility of prevention in every step taken toward better public administration; there is the possibility of prevention, too, in the prompt imposition of penalties, wherever penalties have been so well devised as to be enforceable.

Though some officials that we encountered were plainly striving against odds to carry out the spirit and intent of their state's marriage law, so few prosecutions followed the large number of violations that we endeavored in our interviews to discover the reasons for the discrepancy. It almost seemed that the marrying justice already quoted who had said, in effect, that we marry them "down here" and they divorce them "up there"—pointing in the direction of the courts—had summarized the whole situation.

The first reason given for failure to prosecute flagrant violations of the law was the belief repeatedly expressed that, after people had actually been married, the damage had been done and it was best, therefore, to let the matter drop. We were told that interested parents, though sometimes they took the opposite view, were often the first to object to prosecuting the offender. But when a parent wishes to prosecute there would seem to be a different set of obstacles to contend with. This is well illustrated by a case reported by a policewoman in California.

Carrie F————, aged 14, living in A————, came to her teacher when school opened and asked to be excused, as her brother wished to take her to B————, a large city between fifty and sixty miles away. But a young man who was not her brother was waiting for her across the street in an automobile to take her to the city and seek a marriage license there. The two gave Carrie's age as 18, and the license was issued. The girl's brother, accompanied by a policewoman who reported this case to us, followed promptly to the city, though not soon enough to prevent the marriage. When they reported their grievance to a representative of the District Attorney's office, he interrupted their story with the statement, "I can do nothing for you. You will have to employ a lawyer to annul the marriage." Accordingly a lawyer was engaged. But he felt that the presence of the mother was necessary to swear to the bride's real age. When the mother made the journey, she and her son were informed that they would have to take the matter up in their home town of A————, and ask the District Attorney there instead of in the city to swear out a warrant for the arrest of the man. Returning to A————, they were told at the District Attorney's office that the man in the case could not be arrested until it had been established whether the girl went with him of her own accord

or not, and that, in any event, the matter would have to be dealt with in the city in which the license was issued. In the end the mother became so worried and confused that she gave up. The pair lived together about six months, then the man deserted. Carrie is back in A———— again trying to support herself and her baby.

Soon after our book on Child Marriages was published, one newspaper editorial took the position that the courts could end the marriage of children at any time if they would act. Judges who hear divorce and annulment cases need only report to grand juries infractions of the marriage law, as revealed at these hearings, and the grand juries need only make the license issuers and the civil officiants and religious celebrants obey the law. In Alabama, however, an attempt had been made to bring divorce records before the grand jury in a search for indictable offenses charged and sworn to in the course of divorce proceedings. It was found that in cases of perjury the jury usually yielded to urgent appeals from friends of the parties involved and did nothing about it. Massachusetts has a law which specifically allows judges in divorce cases to refer admitted or established violations of law to prosecuting officials, but these officials have hardly ever acted upon the information.

This suggests the second reason often assigned for few prosecutions; namely, the assumption of most officials charged with bringing offenders to justice that when there has been a violation of law in marriage cases the injured husband or wife, or some

third person aggrieved must always bring the complaint. But from a broader point of view it would appear that the state itself is quite as much involved as any individual can be. When a slack-twisted marriage administration allows pretty much anything to slip through at the license issuing office, society suffers, and it is society that suffers even more vitally when any form of falsification and perjury goes unpunished and unchecked.

This question of perjury constitutes a third reason for the small number of prosecutions. Any act of misrepresentation or of "deceptively altering" is falsification. Perjury is that form of falsification which is accompanied by an oath or solemn affirmation taken in the course of judicial or official proceedings. The survey made of criminal justice in Cleveland found that out of 3,000 common pleas cases analyzed 27 were for offenses against public justice, of which 20 were for bribery and 7 for perjury. "In view of the firm conviction of the bench and bar that perjury and subornation of perjury are common, this showing of less than one per cent charged with such crimes is significant." But of these 27, 15 were dismissed or no bill was found, 10 were either acquitted or "nolled," 2 were found guilty, one was paroled, and one of the 27 was punished.[1]

[1] Criminal Justice in Cleveland. Reports of the survey of the administration of criminal justice in Cleveland, Ohio. Cleveland Foundation, 1922, p. 338.

See also the country's total prison population as given in the United States Census Report on Prisoners, 1923, p. 50. Of the 109,075 prisoners, 16,580 were burglars, and 171 were perjurers.

A juvenile court judge in Illinois reported to us that in practically no case could a conviction be secured for perjury. "The jury would not see that the man who swore falsely in applying for the license had done anything wrong, since he did not take property or do violence to anyone." In another part of the country, an assistant district attorney was even more emphatic: "Juries are used to lying and will not convict people for perjury."

This question of the sanctity of an oath has wider bearing than have the forms of falsification and perjury with which we are here concerned, but these forms too are important. They relate first of all to misrepresentation of ages.[1] Out of 65 prosecutions for falsification—the total number of which we were able to find any trace during a period of field work and of correspondence covering 7 years in all—52 were prosecutions for giving a false age at the license office. In 18 of the 52 the charge was falsification, in 34 it was perjury. But it must not be inferred that age falsification is the only difficulty. People also swear falsely at the license office with regard to their real names, their real place of residence, their

[1] The author of a paper on "Early Marriages—Perjury" in *The Virginia Law Register* for June, 1925, says: "In the experience of the writer there have been five cases of direct perjury in the obtaining of marriage licenses within the last two years and in which the parties guilty of perjury seemed to look upon it as a joke. . . . The writer is aware of two of the cases in which people of more than ordinary intellect swore directly to the fact that a girl was over 21 years of age in order to get a license when the fact was that the girl was under 18, and the men who made the oaths knew the fact. Both men have been indicted and will probably be sent to the penitentiary unless the jury takes the view as we knew it did in one case that it was a sort of joke. . . ."

race, and their marital status. They claim to be single when married or else suppress the fact of a previous marriage followed by a divorce. All of these forms of misrepresentation were illustrated by one or two cases each in the 65 prosecutions referred to.

This, then, is the situation. Action after a marriage has been consummated seems to relatives unpleasant and to juries and officials unimportant or futile. Perjury in connection with a marriage is not usually regarded by law departments as an offense against the state, and even if it were so regarded the legal procedure in perjury cases is clumsy and antiquated. There must be a jury trial, intention must be proved, and the accused, if found guilty, receives a severe sentence. What can be done about it?

The first suggestion to be made relates to prevention and is one that has already been put forward in these pages.[1] If, as is evident, everyone finds it difficult to punish after the event, why not prevent the original error? Our people have been taught to believe that they can do and say whatever they please in a marriage license office. Why not convince them that they are mistaken by requiring them to produce the evidence that they are qualified to receive the state's full sanction to marry? As regards demanding proof of age for all who might conceivably be below the minimum ages, we have shown here and elsewhere that such evidence is easily pro-

[1] Chapter VI, Youthful and Child Marriages, pp. 141–146.

duced.[1] As regards the other matters it is not so easy, but far from impossible. When, in fact, licenses come to be issued, as they should be, in the home districts of the candidates, it would become simple enough. Credible witnesses could then be procured without difficulty to testify to residence, race, and marital status.[2]

A number of license issuers are already alive to the importance of requiring that the statements on their licenses shall agree with the facts, though many of them still treat the affidavit as a substitute for any real verification. A number of issuers are also ready, though these too are in the minority, to take the initiative in instituting proceedings against candidates who have made false statements. It used to be said in the child welfare agencies of the country that a society for placing neglected children in family homes was not worth its salt unless occasionally it found itself prepared to face *habeas corpus* proceedings in court. The same might be said of a license issuer who has never been willing to risk becoming the defendant in mandamus proceedings by refusing to issue a marriage license to those not qualified to receive one.

It is true, however, that no amount of vigilance on the part of the license issuer will protect the state and the public from occasional imposition. The

[1] Our fullest statement about this will be found in the chapter on Proof of Age in Child Marriages, pp. 117 ff.

[2] For the relatively few cases in which license issuance in the home districts of the candidates cannot be required, see Chapter IX, Evasive Out-of-State Marriages, p. 208.

amount of falsification can be greatly reduced; it cannot be done away with altogether. There are penalties and there should be, but it is a mistake to make these too severe. The Cleveland study of criminal courts already quoted, while recognizing the indifference of court and public, feels that the severity of the perjury statute is "a partial explanation of the paralysis of its enforcement." In the marriage law field the remedy for this situation is the elimination of perjury from the list of marriage law offenses and the substitution of falsification.[1] Minimum penalties named in the law for that offense should be so gauged that they will not discourage the bringing of complaints and will not deter juries from finding a verdict of guilty.[2]

For violations of the marriage statute by license issuers and celebrants whose duties are there defined, more severe penalties would seem to be justified. They are authorized by the state to perform an important function and are directly responsible to the state for its proper discharge. In some states, notably in North Carolina, issuers who grant marriage licenses to persons under the age of 18 years without parental consent are required to forfeit to the parents a sum of money named in the law. In that state the

[1] At present 12 states and the District of Columbia declare marriage law falsifications to be perjury, and 18 other states specify penalties for falsification in their marriage laws.

[2] The Children's Code Commission of Kansas proposed in 1921 that false swearing in marriage license applications be made punishable by a minimum fine of $500. Juries would probably regard this sum as too large.

forfeit is $200. Other states require "a sum not to exceed $1,000."

The last suggestion of all under the head of penalties is the most important one; namely, that the public conscience not only with regard to marriage law offenses but offenses against justice in any and all of its ramifications needs to be aroused. That conscience stirs in its sleep occasionally. Let it wake up and pay attention to the so-called minor offenses with which this section of our subject is concerned, and the grosser offenses will not happen nearly so often; there will be fewer bigamy and annulment proceedings and even fewer divorces.

CHAPTER XV

STATE SUPERVISION

IT SHOULD be evident from our description in Part I of the marriage license offices visited and corresponded with that there is great unevenness in the way in which marriage laws are enforced in this country at present. There is good administration in a few places; there is issuance for revenue only in a good many; there is honest but uninformed issuance in a large majority. And almost everywhere the license issuer, whatever his other official duties may happen to be, is singularly without guidance and supervision in the discharge of this one. Manifestly a federal law would be no remedy for such a situation. With administrative headquarters at Washington skilful guidance and supervision affecting marriage license issuance in our more than six thousand offices in 48 states would be practically impossible.

It is true that we have centralized state registration of marriage now in nearly two-thirds of our states, but we shall see that visitation, inspection, instruction, and stimulation from the state bureau of registry is almost an unheard of thing. It is here, therefore, in the development of state supervision rather than in any attempted federal control, that

the main advance in marriage administration during the next two decades will have to be made.

Local administration, of course, is a prime necessity in the granting of marriage licenses. But where any important administrative task must be adapted to the social needs of the individual citizen, one way of avoiding a too rigid legislative control of his personal well-being is to provide good administrative supervision of that public function. It is characteristic of effective state supervision that it renders more law or too much law unnecessary. The two forms of control that here concern us—local and state—are in no sense rivals; they develop side by side. As soon as a county government finds its task growing complex enough to require separate departments of administration, it can acquire new mastery of the situation and new powers of growth through the coordinating hand of the state. Our county school systems have not suffered because state supervision has become a specialized task in the teaching profession. The local public health service prospers wherever there is a strong state board of health with adequate powers of supervision. There must always be a nice adjustment of state procedures to local needs, but within state boundaries such adjustments are altogether practicable. We believe, furthermore, that no new department of state government need be organized in order to develop an effective state supervision of marriage license issuance. Before describing the method by which this might be achieved, it will

be necessary, however, to make a brief examination of the present situation.

I. EXISTING SUPERVISORY POWERS

We have seen that marriage license issuance, though in a few states it is the responsibility of the city, town, or township, is usually a function of county government. In 40 states it is the county that assumes this task, and the county system will be the only one considered at this point. As a matter of fact a combination of the city and the county system in any state that found such an arrangement more convenient would not materially affect plans for supervision. There is a sense in which any official becomes a supervisor who is charged with the duty of license issuance and has assistants to whom he must delegate a part or the whole of this service. Our concern here, however, is with state supervision alone, and we find that today the only supervisory powers exercised over marriage administration are implied powers.

Thirty-one states now require the reporting of all marriages to the state registrar of vital statistics, who is usually the head of a bureau in the state department of health. In most of these states the registrar is also charged with the duty of drafting for the issuers the marriage license forms and certificate forms in use. It is from these laws requiring state registration and standardized forms that the small degree of supervision now discoverable has been

inferred and exercised, though supervision of any kind is still exceptional.

First during our field visits and in 1926 by letter, we made inquiry about marriage registration in the 29 states which then had some form of it. Each registrar was asked whether in his opinion his state's laws gave him any implied power of supervision over the marriage license offices of his state, or whether his advice to issuers was confined to registration only. From 9 states no reply was received to our specific inquiry. From 15 the replies indicated that no supervisory powers were being exercised. From 5 states we received reports of a limited degree of supervision. These 5 reports are summarized here as follows:

Connecticut replied, "We are frequently called upon by registrars for advice in ruling in regard to the issuing of marriage licenses."

Virginia's State Registrar wrote in 1925, "While I am not sure that we have any legal authority over those who issue marriage licenses, we are assuming such authority and are securing good co-operation on the part of the clerks of the counties and of the cities who issue licenses. . . . By our supervision we have been able to secure a very marked improvement in the accuracy and completeness of our records. . . . We are also inducing some of the clerks to make inquiries themselves before making their reports [in the case, that is, of outstanding marriage licenses for which no return has been made]. We detect errors also from time to time in the actual transcribing and secure missing information or corrections from the clerks. It is very rarely that they do not reply promptly and courteously to our inquiries. The very fact that our office is supervising and scrutinizing their work is making them more careful."

A Massachusetts law requires every license issuer to post a list of impediments to marriage. The term impediment is interpreted broadly in this list, which is supplied to each license office by the Secretary of the Commonwealth. A representative of the Massachusetts State Department writes: "While the Division of Vital Statistics of this Department does not send out in book form the instructions relative to the issuing of marriage licenses, as does the office of registrar in New Jersey, it is in close touch with the local officials throughout the Commonwealth, and nearly every case involving a question as to the regularity or the interpretation of the statues or even the law in general is referred to this office for advice before the clerk issues the license. The five day [advance notice] law permits this investigation before the license is issued."

New York State has provided little supervision in the past, and that little seems to have been limited to those cities or towns in which the marriage license issuer has also acted as registrar. The State Registrar wrote in 1925, "We are frequently called upon by these city and town clerks . . . to advise them in matters relative to the law. Such advice is given as a matter of accommodation. . . ." In 1926, however, the State Commissioner of Health was given authority to report violations of the marriage law to the district attorney, who shall then start prosecutions.

New Jersey has a stronger explicit provision for state supervision of marriage license issuance than any of the foregoing states. It provides that "instructions and explanations . . . to persons having duties to perform" under the marriage law shall be sent to all marriage license issuers by the State Bureau of Vital Statistics. The still broader supervisory powers which that bureau would like to have are shown in this proposed measure introduced at a recent session of the legislature:

"The State Department of Health is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the State and is hereby granted supervisory

power over officers issuing marriage licenses, to the end that all of its requirements shall be uniformly complied with. Duly accredited representatives of the Department shall have authority to investigate cases of irregularity or violation of the act, and all registrars of vital statistics and licensing officers shall aid them, upon request, in such investigations. Any local registrar of vital statistics or licensing officer who, in the judgment of the State Department of Health, fails or neglects to discharge efficiently the duties of his office as set forth in this act may be forthwith removed by the said department, and he shall be subject also to such penalties as are provided by this act."

The State Registrar issues a pamphlet of instructions to marriage license issuers. He is also in the habit of calling the attention of individual issuers to violations of the law whenever these come to light in the course of checking their returns to his office.

From some states in which registration is required by law our replies indicate no supervision and very incomplete registration of marriages. The reason given for this is insufficient funds with which to enforce the law. But even more important is the fact that, quite aside from the need for accurate records and accurate statistical data, supervision *without visitation and inspection* leaves unregulated and unstandardized a whole series of processes that vitally affect social welfare. The nature of these processes has been suggested in earlier chapters. The various ways in which they can go wrong have been indicated, but it may be well in this connection to review very briefly conditions that have already been described in much greater detail.

Violations of law are not frequent, but in 7 offices license issuers admitted to us that they granted

licenses below the marriageable age to girls who claimed to be pregnant. Issuers in 3 states were found to be issuing licenses in blank, upon which the names of both candidates were to be filled in later. In one state having an advance notice law, the license issuers were sometimes omitting the date of application from the license form or else giving a false date in order to issue a license illegally on the day of application. And we found that laws requiring the prospective bride to be a resident of the county in which the license is issued were frequently violated.

Carelessness on the part of issuers was more common than lawlessness. This was revealed by the fact that often, in the course of our field visits, we found the local records far from complete. The following instance of carelessness is reported by the New York State Board of Health:

> In another district the registrar, who was also town clerk [and license issuer], had died some months previously. Most of his official duties were conducted in a barber shop of which he was the proprietor. His successor found a roll of about ninety original marriage certificates, covering records of about eight years, on top of a tall case in the shop. Upon investigation it was found that these had never been recorded either in the town or in the county. Furthermore, the deceased registrar had failed to sign the affidavits which are a most important part of the marriage license—a serious omission and in this case not easily corrected. It was necessary to present the case to the Supreme Court to secure an order authorizing the present town clerk to sign the licenses.[1]

[1] *Health News*, October 27, 1924. Published by the New York State Department of Health.

Ignorance of the law is not unknown. Thus, 29 of the 89 license issuers from whom we obtained information on the minimum age for marriage did not know what the minimum age requirement of their state really was, or in some cases that there was such a requirement.

In most states, no specific notification of changes in the marriage law is sent to the issuers. A year after a new measure had been passed in one state, we found that none of the issuers visited in different parts of the state had ever heard of such a law. Similarly, with regard to interpretations of a marriage statute by the attorney general or other proper official, the issuers can remain in complete ignorance of these. The attorney general may have given his opinion at the request of an individual license issuer, but there seems to be no machinery by which an opinion so given is passed on to the other license issuers of the state.

These are all arguments for some form of real state supervision over marriage license issuance, but they dwell too much upon errors to be avoided and are far from suggesting the most valuable features of the supervisory process.

II. DUTIES OF A STATE BUREAU THAT COULD EXERCISE FULL SUPERVISION

Only in barest outline can the duties of a bureau exercising full supervisory powers over the marriage license offices of a state be indicated here. By

analogy, however, powers exercised by state departments with good results in other fields are suggestive, and the history of many forms of state supervision of local units helps to point the way.

Centralized supervision came first by way of the public education systems of the different states. In this field such supervision has achieved its highest development. It is true today as Fairlie indicated some years ago that "the city school systems are so much better than the state requirements that they seldom feel the existence of state control,"[1] but such control has been peculiarly beneficent in the towns and rural districts.

Charities were the next local public service to come under a degree of state control. Though often it was the private societies and institutions that did whatever was not left undone, yet in some instances, where private initiative failed them, the states created institutions of their own quite early to meet the crying needs. State supervision was exercised first over public charitable activities and now in 10 states such oversight has been extended to all private charities, while in 23 others it is extended to some of them.

State boards of health came later than those for education and for charities. Massachusetts established the first such board in 1869, and it is here, through the state bureaus of vital statistics usually organized under the state boards of health, that we

[1] Fairlie, John A.: Local Government in Counties, Towns and Villages. The Century Co., New York, 1906, p. 223.

find the only supervision thus far exercised over marriage license issuance.

On other sides too the powers of the health boards are suggestive. "It would be difficult," says Chapin in his survey of state boards of health, "to find anyone who would claim that existing agencies outside of the larger cities, if left to themselves, are capable of accomplishing very much. They have been tried and have failed. The health officer in the small community at the best abates a few nuisances, placards some cases of contagious disease and fumigates after their recovery."[1] Part of the power of control over communicable disease is now transferred to federal authorities, but the state boards are still in active charge of this important function. They are also doing much to prevent disease, to advance child hygiene, protect the purity of the water and milk supplies, and aid in proper food inspection.

Their supervisory powers are exercised through personal visitation of the local health offices, through state and district conferences, and through bulletins of instruction. In some states the appointment of local officials is under the civil service commission with qualifications laid down by the state board of health. The state boards are vitally interested, of course, in keeping full and accurate statistics of births and deaths. Registration of deaths came first, and effective birth registration, according to De

[1] Chapin, Charles V., M.D.: A Report on State Public Health Work. American Medical Association, Chicago, 1915, p. 82.

Porte, is largely a matter of the last decade. Marriages, as we have seen, are not yet satisfactorily reported, and there seems to be marked objection to interference with anything that belongs in the realm of domestic relations.[1] But both births and deaths belong in that realm.

Present tendencies in state administration are all toward greater unification, and toward unification under a few departments. Instead of creating any new state department of supervision for marriage license issuance, it would seem to be the part of wisdom to begin to extend the powers of the present bureaus of vital statistics by appointing a deputy state registrar of vital statistics in charge of marriage administration. This official should have full supervisory powers over the work of marriage license issuers throughout the state.

When a field representative from the state department responsible for supervision visits a local marriage license office, for what should he look? His duties, of course, should include not merely the routine inspections that would put a check upon carelessness, inefficiency, or ignorance. Nor should they be limited to unification of the service performed in different parts of the state. In his personal contacts with local offices he should aim most of all to discover, through a sympathetic understanding of

[1] De Porte, J. V.: "Development of Statistics of Marriage and Divorce in New York State," in *American Journal of Public Health*, Vol. 16, November, 1926.

difficulties and achievements, the very best methods now in use, and should seek to develop and extend these through friendly conferences with every member of the local staff. In other words, he should come both to learn and to teach.

As an inspector, he would have already examined at the state office the marriage reports for the preceding year that had been received from the county to be visited, and would have applied to them some of the following statistical tests:[1]

1. Number of licenses issued at each age to men under 23 and women under 21 with ratios calculated at the points which suggest the possibility of *age falsification.*[2]

2. Percentage of instances in which *documentary evidence of age* was required before issuance of the group of licenses named under (1), and percentage of those in which no documentary evidence was required.

3. Percentages of all licenses issued with reference to *place of residence* as follows:

Both candidates resident in the district,
Both candidates resident in the state outside the district,
One candidate resident in the district and the other elsewhere,
Both candidates resident outside the state,
All other licenses issued.

4. Percentage of licenses that were issued *outside of office hours* to the total of licenses issued.

5. Percentage of licenses in which *waivers of advance notice* were granted to the total of licenses issued.

[1] By using percentages calculated for each of these totals and for each county, the practices of a given county can be easily compared with those of all the others.

[2] See method illustrated in our book on Child Marriages, p. 104.

6. Percentage of *license applications refused* to the total of applications, together with percentage refused for each of the more frequent grounds of refusal.

7. Percentage of licenses applied for but *not called for* (this for advance notice states).

8. Percentage of licenses issued *without certificates returned* three months after the end of the year.

Where these percentages for a county to be visited show any marked variations from those for other counties, this fact might form one of the starting points for personal interviews held with the license issuer, but they do not, in themselves, constitute a supervisor's most important method of field inspection. He will find himself observing carefully every part of the office procedure, will come to know personally the office assistants, and will consult the whole staff about the wisdom or unwisdom of methods that have been suggested to him by visits to other offices. Uniformity is desirable at certain points. At others, it is not at all so. He will silently observe as well as consult and question, and will ask himself

1. How are candidates for matrimony treated in this office?

2. Does the one who holds the office of license issuer know the work and supervise it in detail? Is he thoroughly familiar with the marriage law and with court or counselor decisions that interpret it?

3. Are he and his staff familiar with the local agencies, public and private, that can help them in certain situations, such as suspected abductions, children seeming to need protection, a family in a situation needing helpful counsel, and so on.

4. Are the office files in good order and is the indexing competently done?

5. How do the methods observed as regards proof of age, proof of residence, granting of waivers, out-of-hour issuance, and so on, compare with the statistical results obtained from examining the reports of this office before visiting it?

6. How does the work of this office compare, on the whole, with that of others of like size in the same state?

7. Have such good personal relations been established with this office that the issuer and his assistants are now voluntarily calling upon the deputy state registrar who is in charge of marriage administration for his advice and assistance?[1]

To stimulate interest and enthusiasm in the important function of marriage license issuance—a task still imperfectly understood or appreciated by the public—is one purpose of state supervision. The state office in charge will find itself supplied with two valuable aids to this end if it can promote (1) a state and a national organization of marriage license issuers, and can also bring about (2) the organization of a volunteer local co-operation which will stimulate public interest in the work done by local offices.

(1) Marriage license issuers, when they are county officers, as they usually are, now belong to state associations of county clerks, clerks of district courts, and so on. But correspondence with these associations has thrown little light upon the administration of marriage license issuance, which seems at their state

[1] Some of the suggestions in this outline have been adapted from a chapter on supervision of public employment offices. See Public Employment Offices: Their Purpose, Structure, and Methods, by Shelby M. Harrison and Associates. Russell Sage Foundation, New York, 1924.

meetings to be regarded as a very minor function of the officials responsible for it. A national organization of all license issuers and of the state supervision bureaus dealing with this question of marriage, and dealing with it in as broad-minded a spirit as their parent departments have dealt with health, would have a wonderfully tonic effect upon local issuance.

(2) Again, the health of the country has been promoted by close co-operation between physicians and laymen and between health departments and volunteer bodies. Such citizens of New York State as Peter Cooper and Dorman B. Eaton were among the early health pioneers. Later Robert W. de Forest, Alfred T. White, and Jacob Riis were leaders in the successful campaigns for better housing, and Nathan Straus in the campaign for pure milk. Many of the public health associations have been influential in a variety of ways, such as, for example, the enlargement of the registration area of the country for births and deaths. Not satisfied with having procured to this end good registration laws in all but 3 of our states, these associations are now proceeding to "help state registrars to organize their offices along approved lines." Dr. Dublin tells of a five-year campaign organized in 1925 by the American Public Health Association in which, among other methods, it has been planned to "interest groups of citizens who can be counted on to support progressive state administration; such are the chambers of commerce, including the important business men of each com-

munity, the federated women's clubs, the local chapters of the American Red Cross, county and state medical societies, and especially the public press."[1] Among friends of state registration the effort now is for good administration, and no health administrator can hope to succeed who ignores the interest of his local public or its need of education.

The American Statistical Association and the American Economic Association have already urged the importance of improved state records of marriage and divorce, but in most offices marriage license issuance is only a part of a local official's duties. Where this is true it is especially important that local interest be organized and that citizens know how the marriage license work of their community is handled. As we stated in Child Marriages, if every one who cares "would display an interest in what the issuers are doing, difficulties with which they are now contending single-handed would be brought to light, and they would be encouraged, moreover, to substitute for merely routine procedures a measure of that discretion and due diligence which the laws of many states now empower them to exercise."

[1] Dublin, Louis I.: "Present Registration System" in *Journal of the American Statistical Association*, Vol. 21, September, 1926, p. 279.

CHAPTER XVI

RETROSPECT AND PROSPECT

IF ANYTHING has been left lying about in this too extended inquiry, the time has come to pick it up and strive to put it in its proper place. Our findings about the working of present-day laws, as set down in preceding chapters, may have been too cumbered with detail to bring out fully the relation of the different parts to one another, or the relation of state control of marriage to subtler forms of control that are achieved by community opinion and by education. Then, for those who have the will to bring about a gradual but steady advance in marriage administration, there may be a few suggestions in an enumeration of the next steps that seem to us likely to be most effective.

Interest in this whole subject of marriage has grown by leaps and bounds. In the eventful year 1917, one did not need to be a prophet to realize that there was going to be an unsettling of family life and a corresponding increase in the divorce rate in this country, following upon our sending two million young men away from the home-keeping occupations of farm, factory, and office to participate overseas in the war in Europe and touch elbows with another

civilization than their own. There can be little question that the mounting divorce rates of the last decade are accounted for, in a considerable part at least, by the sudden social and economic changes of the war years, including as an important factor in those changes the greater participation of women in industry.

Another influence, and one that weighed with us in undertaking this study of marriage and the state, was the passage in 1918 of the Nineteenth Amendment giving women the suffrage. It was evident that before many years these newly enfranchised citizens would develop a vivid public interest in a subject concerning which there had been far too little, and that their aroused concern would make in the long run, though not at once, for greater essential justice and more reasonable progressiveness in the state's relation to marriage.

Of initial importance, in any attempt to study the subject of marriage at this stage, was its temporary separation from the subject of divorce. Whenever marriage and divorce were discussed together, divorce monopolized attention. Moreover, a small army of license issuers, lawmakers, and marriage celebrants (it is estimated in our Introduction that there are at present about 178,000 of these) were dealing with marriage and the state all the time, and it seemed necessary to find out, if possible, how their administering and legislating and officiating could be so improved as to yield a less confused result.

We were prepared for a gradual development of interest in the whole subject, but not for the rapid and almost feverish absorption in it that is now at its height. In the wake of this aroused attention have come proposals for releasing the state from any responsibility for, or connection with, the marriage contract; further proposals for doing this save where there are children; and counter proposals for federal control of both marriage and divorce, with a whole series of suggestions and substitutions that belong somewhere between these two extremes.

I. THE STATE AND MARRIAGE

Behind these more or less concrete projects lie various theories of the state and of its proper functioning. When Blackstone gave wide currency to the assertion that English law "considers marriage in no other light than as a civil contract,"[1] he confused by over-simplification the nature of the state's relation to the contracting parties, for the state's responsibility is to see that the contract holds not only for the two who make it but for all others vitally concerned.

The doctrine of marriage as solely a civil contract developed in England without wholly dislodging another doctrine that had come from Rome by way of the glossarists of the Middle Ages; namely, the doctrine that marriage is a natural right. A third

[1] Blackstone, Sir William: Commentaries on the Laws of England, Book I, p. 433.

theory of marriage has been accepted in many countries at different times, when they happened to be confronted with an unusual degree of social disorganization. This third doctrine makes it the especial business of the state, whether by bounties or by extra taxation and other penalties, to encourage marriage and discourage celibacy. It is not possible to read many court decisions relating to marriage, even those handed down in our own time, without encountering one or another of these doctrines—sometimes an intermixture of all three of them.

Take, for example, a case of statutory rape decided in Texas on appeal in 1926. The man, in jail and awaiting trial for this offense against a child of 13, appealed from the decision of a lower court which had upheld the sheriff and district attorney in refusing to allow the prisoner to be married to his girl victim in the county jail. Testimony showed that the girl was now 14 and that, though she had refused to marry the man earlier, later she had consented to do so—with the approval and urging, probably, of her mother and stepfather, who was the prisoner's brother. Her mother testified that the two "had been trying to get married for three or four years," but this would have meant that the girl was eager to marry at the age of 10. The mother also testified, "She says she is pregnant," but no further evidence seems to have been sought on this point.

The judge, in reversing the decision of the lower court gave, among other reasons, the natural right of every man to marry, and quoted on the subject Sir Matthew Hale, "one of the greatest jurists since the days of Moses." The decision continues, "This divine right of mankind, whether exercised or not by some of the children of men, must forever remain inviolable. While the laws of man, enacted by duly constituted authority in the interest of public good, may prescribe what shall constitute

an impediment to marriage, fix the marriageable age, and designate who shall perform a legal marriage ceremony, yet no act of organized society in any form could destroy this inherent law for the perpetuation of the human species."

Here civil laws and laws of nature seem to be inextricably jumbled, to the damage of both. In a Louisiana decision of 1925, however, an opposite view is upheld.

The defendant had appealed from conviction and sentence for the crime of carnal knowledge. Subsequent to the commission of the offense he had married the girl whom he was charged with having violated. "There is no provision in the statutes," says the court, "permitting the subsequent intermarriage of the parties to serve as a bar to the prosecution. Criminal prosecutions are instituted by the state for the protection of the public and to punish the violation of the law. The person injured by a crime cannot prevent a prosecution by subsequently condoning the offense."

The judge also cited the Kansas case of State v. Newcomer, in which it is asserted, "The principle of condonation which obtains in divorce cases where civil rights are involved has no application in prosecutions brought at the instance of the state for the protection of the public and to punish a violation of the law."

In the state's gradual reinterpretation of its relation to marriage, public welfare is a consideration which will be taken more and more into account. But it is worth noting that, in the cases just cited as in so many others, individual welfare seems to be best protected where there is also clear reasoning about public welfare. To think far enough is to see the two issues become one.

Marriage, then, is not a contract "like any other," nor is it beyond challenge or dispute a natural right. It is a right bounded on every hand by duties. It is a contract apart from all other contracts in that, for individual welfare and public welfare, it must be surrounded by the state with conditions not required in other contracts. These conditions fix degrees of consanguinity and affinity; they protect immaturity by establishing a minimum age for marriage; they strive to prevent fraud in marriage, to safeguard marital unions against communicable disease and defect, as also against compulsion and duress. These are all things that could not be done effectively by the individual citizen or by any more informal organization than that of the state.

And yet there are boundaries beyond which the state cannot safely go; its share in the marriage contract, though important, is still a restricted one. As, from a practical point of view, there would seem to be no justification whatever for an advocacy of free unions, similarly there can be very little justification for the type of marriage reform that would resort to regulation by the state of every detail. Many aspects of marriage that need to be considered cannot be improved by legislation or public administration; they require instead the detailed attention of parents, educators, and religious leaders, and any attempt to control them by legislation would do more harm than good.

During the Bryan free silver campaign of 1896, a

candidate for Congress was asked how he could reconcile with Gresham's Law his advocacy of free coinage and of the circulation at parity of two metals of such unequal value as gold and silver. According to that established law of finance, free and uncontrolled circulation of the baser of two metals tends to drive the other out of circulation. But the candidate had a reply ready. He said, "Elect me to Congress and I'll have Gresham's Law repealed." His state of mind was not unlike that of the advocates of far greater legislative control of marriage who think they can regulate human relations by law alone.

A still better analogy to Gresham's Law would be the present attitude of 24 of our states where common law marriage even now circulates on a parity with state-licensed and recorded marriages, on the assumption that no harm can be done the latter. When the Manual of Marriage Laws and Decisions already referred to and the present volume were both in preparation, it was interesting to note how the statutes and decisions of the 24 states that recognized common law marriage compared with the statutes and decisions of the 24 states that had abolished it. Though statistical demonstration was not possible, for many other modifying factors were present, a careful comparison showed that there were better and more carefully drawn administrative provisions for the safeguarding of marriage in the half of the states that no longer recognized common law marriages. In the common law states, on the other hand,

there seems to be a consciousness that if administrative requirements are made too thoroughgoing they will be the more subject to evasion by the simple method of contracting a marriage by consent only. State-licensed marriage must eventually displace common law marriage in every state in the Union.

In the opinion of some who are interested in reform of our marriage and divorce laws the remedy for the present confusion is a constitutional amendment and a federal law. But there are few things more regional and less federal than our marriage customs. For all practical purposes a federal marriage and divorce law would solve nothing, or certainly it would afford no solution until, for at least another generation, the subject of marriage administration has been dealt with intelligently, systematically, and in careful detail.[1]

II. CERTAIN RECOMMENDATIONS

At a time when our field visits were being made, the following sentences appeared in a serious article on "The Labor Spy": "It is about as difficult to become a detective in this country as it is to get

[1] It is too soon to say whether a grouping of states into regional units for certain government functions is going to be a practicable remedy for over-centralization on the one hand and over-decentralization on the other. But as high an authority as Professor F. J. Turner has said, "A new governmental organization appears to be evolving, not by theory, but by the pressure of solid geographic realities, and by economic interests, peacefully preparing the way for recognition of the geographic section as an integral part of the national machinery. The regional arrangement of the Federal Reserve Bank; the proposed regional consolidation and administration of the railroad systems; the regional analysis of census statistics, all add to the same conclusion."—*Annals of the Association of American Geographers*, Vol. 16, No. 2, June, 1926.

married or buy a license for a dog. This, in view of the detective's powers and responsibilities, is a curious thing."[1] The brief passage emphasized by contrast one of our purposes, which was to bring out the essential difference between a marriage license and any other form of license whatsoever. Few social studies can offer through facts alone a complete solution of the complications under review, but possession of the facts does reduce the number of difficulties.

Merely to bring to light, for example, the small amount of state supervision of marriage license issuance that this country now has, and to recount the successes of such supervision in other fields, is to suggest a possible way out of a number of tangles.[2] The creation of no new department of state government is necessary for, by extending a service now well organized in our state bureaus of vital statistics, it should be possible to develop a system of inspection and unification that would render any state's marriage license service much better than it now is. Maitland says that the "lengthy statutes [of the eighteenth century] did much of that work of detail which would now be done by virtue of the powers that are delegated to ministers and governmental boards."[3] Our marriage laws are still in the "lengthy

[1] Sidney Howard in the *New Republic* for March 30, 1921.

[2] See the preceding chapter on State Supervision, especially pp. 314–320.

[3] Frederick W. Maitland in Encyclopædia Britannica, Eleventh Edition. Article on English Law.

statute" stage. They could be simplified and strengthened if good administrative procedures had been worked out by state supervision under a competent bureau.

It is not our purpose to repeat here all the recommendations scattered throughout these pages, but to review some of the most important of them. On the whole this program of state supervision seems to us the most important single suggestion that we have made, though it is not the one most likely to be adopted without further delay. Though a certain minimum of satisfactory legal enactment will always be necessary, in any state's successful handling of the problem of marriage, administration of the laws will play a more important part than the laws themselves.

An example of the type of enactment essential for good administration is a statute abolishing common law marriage. The state that still recognizes such marriages lowers its standard for all marriages and confuses the interpretations of its courts upon various matrimonial issues. So deeply rooted, however, is common law marriage in some parts of the country that this may not be a good beginning of reform, but a goal to be worked toward gradually.

Next to state supervision and a state license for every marriage, we should rank in order of importance the procedures that control the time, place, and method of license issuance. These are advance notice, application for the license by both candidates, verification as a substitute for publicity, home dis-

trict issuance, a residential requirement, and the double license for out-of-state marriages. An advance notice of at least 5 days before the license can be issued, with provision for a court waiver in real emergencies, has been fully explained;[1] it is not an untried experiment. Again, though candidates need appear but once before the license issuer, either separately or together as proves most convenient, both should be required to appear that once. We are educated to expect a certain degree of formality in effecting the transfer of a piece of property, in the issuance of passports, in granting a license to drive a car. Demonstration that the state regards marriage as a matter of importance can do nothing but good, though the greatest single benefit of both the advance notice requirement and of the appearance of both candidates in person will be the discouragement of undue haste.

Publication of the banns was at one time an effective form of publicity. It is no longer so.[2] But a possible substitute for any generalized publicity is verification of the candidates' qualifications by documentary evidence, the evidence of competent witnesses, the consent of parents when properly attested, and, in doubtful cases, the requirement by the issuer of further evidence. Publicity may sometimes serve a useful purpose, but usually it comes too

[1] Chapter V, Advance Notice of Intention to Marry, p. 116; and Chapter VII, Hasty Marriages.

[2] Chapter VIII, Clandestine Marriages, p. 166.

late, and often the fear of it sends candidates for a license who have nothing disgraceful to hide to places where they are unknown. Less publicity and more verification, plus a requirement that marriage licenses be issued in the home district of one of the pair are the remedies.[1] An advance notice law would aid materially in destroying one of the worst scandals in connection with marriage license issuance from which this country suffers today; namely, the marriage market town.[2]

The marriage market town depends for a large part of its patronage upon strangers seeking to evade some provision in the marriage law of their home state, some possible interference by relatives, or some discovery of conditions that, if known, would make their marriage impossible anywhere. Child marriages and very youthful marriages are often made possible by the existence of these Gretna Greens.

The evasive out-of-state marriage must not be confused with marriages solemnized away from the home state of either candidate for legitimate reasons. Some marriages of the latter type are necessary and must be provided for by law. How to meet this need and yet prevent evasive marriages is a problem. There may be a practicable solution in the double license plan described elsewhere.[3] Under this proposed plan, residents of a state must meet its requirements for marriage whenever they go to another state for their

[1] *Ibid.*, pp. 180–186. [2] Chapter IV, Exploitation, pp. 84–101.
[3] Chapter IX, Evasive Out-of-State Marriages, pp. 208–210.

license by filing in the latter state, as proof that they are qualified, a marriage license issued in the home district of the bride.

Interstate relations always present difficulties. This fact has led to some agitation recently for "a uniform state marriage law," by which is probably meant uniform state laws. But as the subject of state control of marriage comes to be more studied and more systematized, greater uniformity of procedure as between states of the American Federation will be a natural growth rather than a scheme superimposed. We have indicated ways in which adjustments have already been brought about through accommodation, have explained the double license plan, and have suggested possible lines of development for the future in the present small beginnings of regional understandings now limited to the field of economics.[1] It would be foolish to pretend, however, that a complete solution of the difficulties growing out of successful evasion has yet been found.

Immaturity in mating is so serious a matter, wasting as it often does the longer life now assured to our young people by better health measures, that the 12 states still permitting girls to be married at the early age of 12, provided only that their parents consent, should raise that age minimum as rapidly as possible to 16.[2] In some states it may be necessary to raise the age first to 14 and later to 16, but this higher

[1] Chapter IX, Evasive Out-of-State Marriages, pp. 210–213.

[2] Chapter VI, Youthful and Child Marriages, p. 130.

limit has proved to be one in favor of which public sentiment can easily be aroused. When license issuers require proof of age from all—both boys and girls—who are not obviously beyond their majority, this precaution, combined with a residential requirement for issuance, will reduce the number of premature marriages to the very few in which courts of record find it necessary for adequate cause to grant exceptions.

In examining conditions surrounding the individual license issuer, the conviction grows that any better marriage procedures must be developed persistently but slowly out of the best that the issuers are found to be doing now. Once public sentiment has been aroused on the general subject of marriage and the state, administrative details will be the important things to pay attention to, and at the center of these details and practically in control of them stands the license issuer. Though it is unnecessary to repeat here the findings of our longest chapter,[1] we cannot say too often that the fee system of payment to issuers should be abolished, that the affidavits of candidates for marriage are no substitute at the license office for actual proof of age, proof of residence, or proof of competence of witnesses, and that out-of-hour issuance of licenses should be discouraged save under the emergency conditions described elsewhere.[2] Stimulation to issuers should come not only through

[1] See Chapter III, The License Issuer.
[2] Chapter VII, Hasty Marriages, p. 164.

state supervision of their work but through state and national meetings of marriage license issuers, where there could be free interchange of experiences and methods. With a view to developing intelligent public interest in the issuer's problems, there might even be organized co-operation of volunteers with the larger license offices.[1]

Marriage returns made to the license office immediately after a ceremony are important not only from a statistical point of view but as a necessary protection to the persons married. They are spared inconvenience and hardship when all missing returns are followed up by the license issuer, whose careful attention to records is, indeed, important for many other reasons.[2]

It is an interesting fact that, not counting deputies, the number of women license issuers in the United States in 1927 was a little less than 10 per cent of the total. When we made an earlier count in 1924, they constituted a little more than 7 per cent.

As greater skill comes to be required of issuers, their task should be protected from political pressure by civil service rules. This implies that the position ought to be an appointive rather than an elective one.

The marriage ceremony has its state aspects and its strictly religious aspects. Of the latter we have made no investigation. The clergy, however, of all denominations do assume certain duties to the

[1] Chapter XV, State Supervision, p. 327.

[2] Chapter XIV, Records and Penalties, pp. 293–302.

state in celebrating a marriage. In nearly all our states they must demand that a license be produced before the ceremony can be performed, and in all states but one they must report each ceremony to the proper public authorities. Many states place upon them the further duty of assuring themselves, independently of the license issuer's judgment, that the marriage is a legal one. This means that all officiants at marriages, whether ecclesiastical or lay, should be thoroughly familiar with the provisions of their state marriage law.

Though we estimate that not more than a quarter of those who marry in the United States avail themselves of a civil ceremony, the reasons that lead many to choose this form justify the state in providing for a reasonable number of civil officiants. At present there are altogether too many. The privilege of officiating is eagerly sought by civil servants who, to judge by the way in which they discharge the duty, have no interest in the ceremony beyond the fees collected. As the chief offenders are justices of the peace, the remedy suggested is that such officials be allowed to solemnize marriages only after they have been specially commissioned and given a salary for the purpose, and that the number so commissioned be strictly limited.[1] Then the places of largest population could establish central marriage bureaus, and civil officiants everywhere could be required to refuse all gratuities, and to turn over all fees—the

[1] Chapter X, The Civil Officiant, p. 236.

size of which should be fixed by law—to the county, city, or town.

The commercial practices of marrying parsons can and should be dealt with by their various denominational bodies. At present the marrying parson officiates at far more than his proportionate share of marriages, and often does so in utter disregard of public welfare or the welfare of those whom he unites in marriage.[1]

Rules for the personal guidance of the clergyman who aims to be a celebrant at ceremonies rich in spiritual and social implications can best be developed out of the experience of the clergy themselves.[2] We have ventured, however, to list the social disabilities of candidates for marriage that not all clergymen recognize, such as lack of age, age falsification, absence of parental consent, physical disability, undue pressure, and so on. There is no law anywhere which compels a clergyman to officiate at a marriage until he is satisfied that it is the right thing to do. To be thus satisfied there should usually be an interval of a few days between the application for his services and the ceremony.[3]

In theological seminaries, instruction on a clergyman's responsibilities as celebrant of marriages seems to be meager, or else entirely lacking. The subject deserves much more thorough treatment in these institutions.

[1] See Chapter XIII, The Marrying Parson.

[2] Chapter XII, The Standards of Individual Clergymen, pp. 263–270.

[3] *Ibid.*, p. 277.

III. A PROGRAM OF ACTION

Mr. and Mrs. Hammond, in a short passage which is reprinted at the beginning of this book, call attention to "a tendency of the human mind to be overwhelmed by the phenomena of the time," and deplore the fact that men think it their business "to explain, rather than to control, the forces of the hour." Considered in the light of recent discussions about marriage, their comment is pertinent. There has been too much explaining, too little intelligent action. The administrative findings of this book are only a tentative beginning at best, but they do suggest the need of action. In case any group or groups of people should feel moved to carry out some of our recommendations, we venture to add to them a few practical considerations as to procedure. The state's present attempts to effect rational control of marriage can be improved upon. Control, however, is a two-edged tool—it constructs and it tears down. The important thing, therefore, is to avoid a ready-made control superimposed in a wholesale way. The best procedures cannot be the same for the whole country, nor can they be applied in the same way everywhere.

1. Our first suggestion, therefore, would be that, in each state, action looking to marriage reform be preceded by an examination into what is happening, especially as regards the administrative features of the state's marriage law as tabulated in Appendix B.

In very few states has there been even a preliminary study made of actual practices, but it is these few that have begun to make substantial gains.

2. The time would seem to be ripe for the organization, state by state, of committees to study and gradually to improve the present situation. Action in individual communities, however, may well precede more formal, state-wide organization. The important thing, in that case, is to know the administrative happenings in the local marriage license office and to proceed from this starting point rather than from the legislative side. Many administrative methods can be improved without the need of new legislation, but intimate understanding should precede attempts to effect changes. To know the license issuer and understand his difficulties, to give him needed backing whenever he deserves it, is the first step. It should be understood in this connection, however, that where the fee system of compensating marriage license issuers for their services still survives, cooperation may be blocked. We have already indicated that all fees should go into the public treasury and issuers be paid fixed salaries.[1]

3. When, in several different centers of a state, an interest in the subject has ceased to be vague and has achieved definition, there should be intercommunication and perhaps a state committee. This committee may well continue for a time to study needs and to select with care its strategic point of attack. Indeed,

[1] Chapter III, The License Issuer, p. 80.

at every stage, study should precede action. But action should follow. Fact-gathering is a necessary step; fact-using is a more necessary one.

4. A movement for better state handling of any details of this subject that really concern the state may have very diverse origins. It does not matter what group makes the beginning, provided it is intelligent, willing to learn, thoroughly co-operative, and thoroughly in earnest. In questions relating to immaturity and its exploitation the social work agencies of the country have been leaders. Some aspects of the subject especially interest the churches. Others stir the women's organizations to activity. It would be unfortunate, however, if the subject as a whole came to be regarded as the peculiar province of any one of these. At some stage the attack should become a united attack and, if only the regional facts have been well studied and thoroughly grasped, that united attack should be toward some one next step—a step that all can agree upon as necessary. Here is an incomplete list of the groups and organizations that, even at this early stage, are known to have borne some part in administrative improvements at the marriage license office or in campaigns for better state marriage laws:

Commissioners on Uniform State Laws
Judges of the state and municipal courts
Marriage license issuers
Catholic, Protestant, and Jewish churches
Ministerial associations

Family welfare societies
Child welfare agencies
School attendance officers
Probation associations
Leagues of Women Voters
Women's welfare committees of the leading political parties
Individual members of state legislatures

5. If all has been done to improve administration that can be done without resort to a new legislative measure, then the first legislative steps attempted should be important enough to be worth taking, but seldom is it expedient that the most important advances described in this book should be the first attempted. Sometimes advocates of marriage reform introduce a bill that covers every phase of the subject. As a rule such a measure goes down to defeat. Its comprehensive proposals unite against it every one in the legislature who is opposed to even one of its features.

The temper and motives of those who oppose the new legislation must be understood. When, several years ago, a social worker appeared before a legislative committee to urge that the 12 year minimum age for marriage then in force be raised, the chairman said, "All the men on this committee are married men. Do you suppose we are going to recommend any measure that would make marriage more difficult?" This seemed a very primitive reaction to an improvement in the law that was clearly needed, but since then this same chairman has actually sponsored

a bill to prevent child marriages and has helped to make it effective.

6. Among the measures best adapted for early introduction in legislatures, bills to prevent child marriages stand first, especially in states in which the minimum age is now as low as 12. Documentary evidence of age can be required by license issuers without new legislation, but New York's specific measure bearing upon this subject may well be copied elsewhere.[1]

Advance notice is another measure to advocate early. Though it has not the emotional appeal of a bill against child marriage, many elements in the community can now be impressed with the dangers of undue haste in marriage. The measure should be carefully drawn. Sometimes it has failed or has been repealed later because the required interval between application and issuance was too long a one. Until states have successfully operated with a five-day interval, it is unwise to ask for more.

The discretion to be exercised by license issuers is such an important point that legislative action upon it may become necessary. But this should be resorted to only when an administrative ruling—an opinion of the attorney general, for instance—cannot be obtained instead, or when his ruling has been adverse.

Though the marriage market town will be blotted out as soon as administrative and legislative reforms

[1] Chapter VI, Youthful and Child Marriages, p. 143.

begin to make headway, citizens of such towns need not wait for that. Decent public opinion is not entirely helpless. It can make itself felt in the local marriage license bureau, the civil officiant's office, and the marrying parson's parlor.

7. All of these more obvious first steps need, if they are to succeed, carefully authenticated local facts behind them. Dependence upon facts gathered elsewhere or upon action taken elsewhere is not enough. The statements of this book, for example, though they are as specific as we have known how to make them, will need to be supplemented and corrected by data gathered within the state and gathered comparatively recently.

8. The abuses with which marriage reform must deal have a long past behind them. Advocates of change should not be discouraged by one or two defeats. They must remember that, if their facts and their remedies are a good fit, persistence will establish both. When, moreover, a legislative gain is made, it needs to be fitted into the administrative machinery of each locality. Some of the best and most careful work will be needed at this very point.

Finally, there may still be important gains to be made, such as good state supervision of the whole process, and advocates of marriage reform who have won a preliminary victory should enlarge their fellowship and press forward, still choosing each successive step wisely and giving each a good underpinning of study and of local fact-gathering.

APPENDICES

APPENDIX A

Blanks and Record Forms Suggested for Use in Carrying Out Various Administrative Procedures

THE forms here given incorporate the best features of existing forms, together with some new features that are suggested because of the inadequacy of forms now in use. As certain of the marriage measures recommended in this book have been adopted by none of the states of the Union as yet, and as it seems worth while to illustrate here the administrative application of these proposed measures by printing samples of the forms that might be used after their adoption, all the forms given have been drafted for an imaginary state—for the state of Columbia. This must be kept in mind in consulting them. *They are intended for use after the necessary legislation or administrative ruling has been adopted and not before.* For fuller explanation, see Chapter XIV, Records and Penalties, pages 302–304.

Form A

APPLICATION FOR MARRIAGE LICENSE AND RECORD OF SAME

County..... Application No.....

AFFIDAVITS

Male Applicant[1]	*Female Applicant*[1]
Name.....	Name.....
	Maiden name if previously married.....
Residence[2]	Residence[2]
Street and No. or RFD Route.....	Street and No. or RFD Route.....
City or town and state.....	City or town and state.....
.....	.....
Witnesses to residence	Witnesses to residence
Name.....	Name.....
Street and No. or RFD Route.....	Street and No. or RFD Route.....
City or town and state...	City or town and state...
.....	.....
Name.....	Name.....
Street and No. or RFD Route.....	Street and No. or RFD Route.....
City or town and state...	City or town and state...
.....	.....

[1] Fill out only one column when the license is issued to but one applicant. If the license is issued to applicants one of whom resides outside of the state, the column for the latter's application may be filled out and the statements be sworn to at any time prior to the issuance of the license. If both applicants have their specified residence outside of the state both must appear when application is made and swear to the required statements.

[2] Latest residence for a six-month period should be required, unless such period has been reduced by court order.

Form A (continued)

White ( ) or colored ( )	White ( ) or colored ( )
Age.....Date of birth.....	Age.....Date of birth.....
Place of birth.....	Place of birth.....
Occupation.....	Occupation.....
Marital status	Marital status
Proposed marriage is the first ( ); or second ( ); or third ( ); or fourth ( )	Proposed marriage is the first ( ); or second ( ); or third ( ); or fourth ( )
Most recent previous marriage, if any, was dissolved by wife's death ( ); or divorce ( ); or annulment ( ); on..(date)	Most recent previous marriage, if any, was dissolved by husband's death ( ); or divorce ( ); or annulment ( ); on..(date)
Name of prospective bride.....	Name of prospective bridegroom.....
Street and No. or RFD Route.....	Street and No. or RFD Route.....
City or town and state.....	City or town and state.....
Relationship by blood to her, if any.....	Relationship by blood to him, if any.....
Father's name.....	Father's name.....
Place of birth.....	Place of birth.....
Mother's maiden name.....	Mother's maiden name.....
Place of birth.....	Place of birth.....
Intended officiant or witnessing clerk[1].....	Intended officiant or witnessing clerk[1].....
Name.....	Name.....
Street and No. or RFD Route.....	Street and No. or RFD Route.....
City or town and state.....	City or town and state.....

[1] The name of the clerk or secretary of any religious society in whose presence the marriage is to be solemnized without an officiant, in accordance with the rules of such religious body.

Form A (continued)

STATE OF COLUMBIA, County of.....
City of...Date...Hour....

Then appeared personally before me the above-named male applicant for a marriage license, identified to my satisfaction, and made oath that the above statements subscribed by him are true to the best of his knowledge and belief and that he knows of no legal objection to the proposed marriage.

.....Co. Clerk[1] or
.....Dep. Co. Clerk

.....
(Signature of applicant)

STATE OF COLUMBIA, County of.....
City of...Date...Hour....

Then appeared personally before me the above-named female applicant for a marriage license, identified to my satisfaction, and made oath that the above statements subscribed by her are true to the best of her knowledge and belief and that she knows of no legal objection to the proposed marriage.

.....Co. Clerk[1] or
.....Dep. Co. Clerk

.....
(Signature of applicant)

ADMINISTRATIVE RECORD

Male Applicant

Legal period of residence reduced to.....
by Judge.....

Female Applicant

Legal period of residence reduced to.....
by Judge.....
Other state license filed,[2] issued in.....(place)
.....(state)

[1] It is assumed throughout this set of forms that in the state of Columbia the county clerk of each county is the marriage license issuer.

[2] To be filled out in case both applicants reside outside of the state.

Form A (continued)

Proof of age (if applicant's age is given as 23 or less)
Birth certificate ( ) or
Passport ( ) or
School record ( ) or
Other proof (specify)

If age is under 21, consent or consents filed of
Father ( ) Mother ( )
Guardian ( )
Judge.....

If age is under 18, order filed of Judge.....

Divorce or annulment decree filed, dated.....

Waiver of that requirement by Judge.....

Waiver of advance notice by Judge.....

Proof of age (if applicant's age is given as 21 or less)
Birth certificate ( ) or
Passport ( ) or
School record ( ) or
Other proof (specify)

If age is under 18, consent or consents filed of
Father ( ) Mother ( )
Guardian ( )
Judge.....

If age is under 16, order filed of Judge.....

Divorce or annulment decree filed, dated.....

Waiver of that requirement by Judge.....

Waiver of advance notice by Judge.....

License issued.....(date).....(hour)
License refused.....(date) because of.....
Marriage certificate received.....(date).....
Officiant or witnessing clerk.....Official Title.....
Street and No. or RFD Route.....Date of marriage.....
City or town and state.....
Membership certificate received from witnessing clerk....(date)
License returned unused.....(date)

License not returned, but reported .....(date) by to have been used ( ) or unused ( )
{ Male applicant ( ) or
Female applicant ( ) or
Intended officiant ( ) or
Witnessing clerk ( ) or
Other person ( )
Name.....

Form B

RECEIPT FOR MARRIAGE LICENSE APPLICATION

County of.....Date.....Hour.....Application No.....

To [Name of applicants (or applicant) for a marriage license]:

Receipt is hereby acknowledged of your marriage license application bearing the above number.

Return this receipt, after 5 complete days have elapsed, with your request that the license applied for be delivered.

.....County Clerk or Dep. County Clerk

REQUIREMENTS OF THE MARRIAGE LAW

[A summary of the marriage law, so far as it relates to the qualifications of marriage license applicants, the steps to be taken in obtaining a license, penalties for falsification, and the obligation of applicants to present the license to the officiant or return it if it is not used within the specified period.]

Form C

MARRIAGE LICENSE

Note. This is a MARRIAGE LICENSE NOT A MARRIAGE CERTIFICATE.[1] If it is not used within 30 days after its issuance it becomes void and must be returned to this office by the persons or the person to whom it is issued. Any person who shall fail to return an unused license within 30 days shall be punished by a fine of not more than ... dollars or by imprisonment in the county jail for not more than ... or by both such fine and imprisonment.

This license may be used in any county of the state for the proposed marriage, provided the officiant or witnessing clerk has satisfied himself that such marriage is not contrary to law.

The issuance of this license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the contracting parties illegal.

County of..... Application No.....

Male Applicant

I hereby certify that the person named below, an applicant for a marriage license, has been

Female Applicant

I hereby certify that the person named below, an applicant for a marriage license, has been

Form C (continued)

personally examined by me. I have no reasonable cause to believe that any of the statements made by him are untrue.

Name.....
Residence[2].....
Street and No. or RFD Route.....
City or town.....
Age, if under 21,.....Date of birth.....
Consent or consents filed of
Father ( ) Guardian ( )
Mother ( ) Judge.....
Marital status: Single ( )
Most recent previous marriage, if any, was dissolved by wife's death ( ); or divorce ( ); or annulment ( ) on.....
(date).....
Name of prospective wife
.....

Given under my hand and the seal of the County this.....
day of.....A.D.....
.....County Clerk or
.....Dep. County Clerk

personally examined by me. I have no reasonable cause to believe that any of the statements made by her are untrue.

Name.....
Residence[2].....
Street and No. or RFD Route.....
City or town.....
Age, if under 18,.....Date of birth.....
Consent or consents filed of
Father ( ) Guardian ( )
Mother ( ) Judge.....
Marital status: Single ( )
Most recent previous marriage, if any, was dissolved by husband's death ( ); or divorce ( ); or annulment ( ); on.....
(date).....
Name of prospective husband
.....

Given under my hand and the seal of the County this.....
day of.....A.D.....
.....County Clerk or
.....Dep. County Clerk

[1] For illustrations of the need for this warning, see Chapter XIV, Records and Penalties, p. 300.

[2] Latest residence for a six-month period unless such period has been reduced by court order.

Form D

Marriage Certificate

On the.....day of.....A.D.....in.....
(Place of ceremony)

in the State of Columbia, at.....
(Street and number, or church, etc.)

.....of.....[1] in the State of.....and
(Name of bridegroom) (Residence)

.....of.....[1] in the State of.....
(Name of bride) (Residence)

declared in my presence that they took each other as husband and wife.

The marriage license for said marriage was issued by the county clerk of.....County. It was numbered..... and dated.....[2]

The marriage licenses for said marriage were issued as follows: the license for the bridegroom by the county clerk of..... County, being numbered.....and dated.....; and the license for the bride by the county clerk of.....County, being numbered.....and dated.....[3]

Name of officiant or witnessing clerk.....
Official title.....
Residing at.....
(Street and No., or RFD Route)
.....
(City or town and state)

.....	.....
(Name of witness)	(Name of witness)
.....	.....
(Street and No., or RFD Route)	(Street and No., or RFD Route)
.....	.....
(City or town and state)	(City or town and state)

[1] Latest residence for a six-month period, unless such period has been reduced by court order.

[2] When separate marriage licenses are presented for the contracting parties, omit this paragraph and use the next following paragraph instead.

[3] Omit this paragraph when a single license is presented for both contracting parties.

Form E

ENVELOPE FOR DOCUMENTS

Explanation. This form is a long envelope addressed to the county clerk who issues the license. In this envelope, when it is delivered to the applicants, are placed the license, three marriage certificate forms, and in case of a marriage without an officiant, the required membership certificate. Across the end of the envelope appears a printed statement of the law requiring the officiant or witnessing clerk to send a marriage certificate (with a membership certificate attached, in case of a marriage without an officiant) to the county clerk and give certificates to each of the candidates, and a statement of the penalty fixed for violations.

Form F

CONSENT OF PARENTS, PARENT, OR GUARDIAN FOR THE MARRIAGE OF BOYS UNDER 21 OR GIRLS UNDER 18 YEARS OF AGE

City or Town..... Date.....
State..... Marriage License Application No. ....
Concerning the application by.....for a license to marry .....

Consent for said marriage is hereby given by the undersigned, each bearing the specified relationship to the applicant:

.....Father .....Mother
.....Guardian

I hereby certify that the above-named are [is] personally known to me to bear the stated relationships [relationship] to the applicant:

Name.....
Street and No. or RFD Route.....
City or town and state.....

Signed in my presence

.....County Clerk, or
.....Dep. County Clerk, or
.....(Name of other official or person authorized to administer oaths)
.....(Title)

Form G

CONSENT OF A JUDGE IN LIEU OF PARENTAL CONSENT

City or town..... Marriage License Application
State..... No.....[1]

Upon application made to me in person on this date by.....
of.....,[2] aged.....years and.....months,
(Residence)
an applicant for a marriage license, and after hearing such evidence as has been presented to me showing that there is no parent or guardian having the actual care, custody and control of said applicant, I hereby certify that in my opinion it is expedient that a marriage license be issued for said marriage.

In witness whereof I have hereunto set my hand and the seal of said court this.....day of.....A.D.....

Signature.....
Judge of the.....Court

[1] To be filled in by the county clerk to whom application is made for the license.

[2] Latest residence for a six-month period, unless such period has been reduced by court order.

Form H

CONSENT OF A JUDGE FOR LICENSE ISSUANCE TO A MALE APPLICANT UNDER 18 YEARS OF AGE OR A FEMALE APPLICANT UNDER 16 YEARS OF AGE

County..... Marriage License Application
No. .....

Upon application made to me in person on the.....day
of.....A.D.....by....., aged.....
years and.....months, of.....,[1] and by.....
(Residence of minor)
and.....of....., the { parents ( ) / surviving parent ( ) / guardian ( ) }
(Residence of parents, etc.)

of said applicant,[2] and after hearing such evidence as has been presented to me relating to such proposed marriage, and it appearing to me that the aforesaid party has made application for a marriage license according to law, I hereby certify that in my opinion it is expedient that such marriage license be issued, and such issuance is hereby authorized.

In witness whereof, I have hereunto set my hand and the seal of said Court, this.....day of....., A.D.....

Signature.....

Judge of the.....Court

[1] Latest residence for a six-month period, unless such period has been reduced by court order.

[2] This clause, relating to parents or guardian, to be stricken out by the judge to whom application is made if he is satisfied that the minor has no parent or guardian having actual care, custody and control.

Form I

Waiver of the Advance Notice

County..... Marriage License Application No.....

Upon application to me made on this.....day of.....by .....of.....[1] and.....[2] of.....,[1] part.....[3] to an intended marriage, and after hearing such evidence as has been presented to me relating to said intended marriage, and it appearing to me that the aforesaid part.....[3] ha..[4] made application for a license to marry according to law, I hereby certify that in my opinion it is expedient that a marriage license be issued without delay, and such issuance is hereby authorized.

In witness whereof, I have hereunto set my hand and the seal of said Court, this.....day of.....A.D.....

Signature.....

Judge of the.....Court

[1] Latest residence for a six-month period, unless such period has been reduced by court order.

[2] To be stricken out if but one of the parties applies for the waiver.

[3] To read "party" or "parties" as the case may be.

[4] To read "has" or "have" as the case may be.

Form J

ORDER REDUCING THE REQUIRED PERIOD OF RESIDENCE

County..... Marriage License Application No.....[1]

Upon application to me made this.....day of.....
by.....of.....,[2] a party to an intended
(Residence)
marriage, and after hearing such evidence as has been presented to me relating to such marriage, I hereby certify that in my opinion it is expedient in this case that the period of residence specified by law for the issuance of a marriage license be reduced to.....
(Period)

In witness whereof I have hereunto set my hand and the seal of said court, this.....day of.....A.D.....

Signature.....

Judge of the.....Court

[1] To be filled in by the county clerk to whom application is made for the license.

[2] The applicant's actual residence on the specified date, which residence must be in the county in which the marriage license is applied for.

Form K

CERTIFICATE FOR A MARRIAGE WITHOUT AN OFFICIANT

Marriage License Application No.....[1]

I hereby certify that....., who is an applicant for a marriage license, is a member of the religious body known as .....in the city or town of.....State of....., and that in accordance with the rules of that body marriages are solemnized without the presence of an officiant.

Date..... Signature.....

Official position.....

Street and No. or RFD Route...

City or town and state.....

[1] To be filled in by the county clerk to whom application is made for the license.

Form L

FOLLOW-UP LETTER TO THE INTENDED OFFICIANT[1]

County..... Marriage License Application No.....
To..... Date.....

Under date of....., 19.., a marriage license, No...., was issued in this office to.....[2] and.....,[2] your name being given as the intended officiant (or witnessing clerk). No certificate for that marriage has been received. If the persons named have been married by you (or in your presence as a witnessing clerk) you are requested to forward the certificate at once. A blank form is enclosed. If the marriage has not been performed by you (or in your presence as a witnessing clerk) will you kindly advise this office?

In this connection your attention is directed to Section .. of the marriage law, which requires that a marriage certificate shall be returned to the issuer of the marriage license within five days after the ceremony. Every officiant or witnessing clerk who neglects to return such a certificate is subject, by Section .., to a fine of not less than $..... or to imprisonment for not more than....days or to both fine and imprisonment.

Attention is also called to the fact that by Section .. of the marriage law the marriage license referred to is now invalid, having been issued more than 30 days ago. If the license is in your possession and no ceremony has been performed you are requested to return it to this office at once.

.....County Clerk or
.....Dep. County Clerk

[1] For a discussion of the importance of the follow-up letter, see Chapter XIV, Records and Penalties, p. 298.

[2] Only one name to be filled in if the license was issued to but one of the contracting parties.

Form M

GENERAL FOLLOW-UP LETTER TO EACH OF THE CONTRACTING PARTIES

[For cases where no reply has been received to a follow-up sent to the officiant.]

County..... Marriage License Application No.....
Date.....

To.....

Under date of....., 19.., a marriage license, No...., was issued in this office for your marriage to..... No certificate for that marriage has been received.

If the marriage has been solemnized it is a matter of very great importance to you to have an official record of it in this office. You are requested, therefore, to communicate at once with the person who officiated at the marriage (or who acted as witnessing clerk), whose duty it is to return the certificate, and to direct his attention to Section ... of the marriage law which requires that a marriage certificate shall be returned to the issuer of the marriage license within five days after the ceremony. Every officiant or witnessing clerk who neglects to return such a certificate is subject, by Section ..., to a fine of not less than .....dollars or to imprisonment for not more than..... days or to both fine and imprisonment.

Attention is also called to the fact that by Section ... of the marriage law the marriage license referred to is now invalid, having been issued more than 30 days ago. If the license is still in your possession, you are requested to return it to this office at once. Failure to return an unused license within 30 days from the date of its issuance subjects the person to whom it was issued to a fine of not less than $..... or imprisonment of not less than .....days or both fine and imprisonment.

If at any time you wish a new license issued, one may be obtained by complying with the procedure established by law.

.....County Clerk or
.....Dep. County Clerk

Form N

SPECIAL FOLLOW-UP LETTER TO EACH OF THE CONTRACTING PARTIES

[For cases where the intended officiant has reported that he has not solemnized the marriage referred to.]

County..... Marriage License Application No.....
Date.....

To.....

Under date of....., 19.., a marriage license, No...., was issued in this office for your marriage to..... No certificate for that marriage has been received, and the person named by you as the intended officiant has informed the office that he has not solemnized the marriage referred to.

Your attention is called to the fact that by Section ... of the marriage law the marriage license referred to is now invalid, having been issued more than 30 days ago. If the license is still in your possession, you are requested to return it to this office at once. Failure to return an unused license within 30 days from the date of its issuance subjects the person to whom it was issued to a fine of not less than $..... or imprisonment of not less than .....days or both fine and imprisonment. If at any time you wish a new license issued, one may be obtained by complying with the procedure established by law.

.....County Clerk or
.....Dep. County Clerk

APPENDIX B

TABLE 3.—COMPARISON OF CERTAIN MARRIAGE REQUIREMENTS, BY STATES

[For footnote references and key to abbreviations see pages following this table. For fuller details, see Marriage Laws and Decisions, by Geoffrey May, Russell Sage Foundation, New York, 1929. This table compares requirements as of January 1, 1928.]

State	Disqualifications specified	License issuer	Who must apply in person	Days of advance notice	Minimum age		Age under which parental consent is required		Residential requirements	Issuer paid by	Out-of-state evasion	Common law marriages valid
					Boys	Girls	Boys	Girls				
Column numbers	1	2	3	4	5		6		7	8	9	10
Alabama	D V	P	—	—	17	14	21	18	—	V	—	Yes
Arizona	D	Cl	V	—	18	16[a]	21	18	—	S	F	No
Arkansas	F	Cl	—	—	17	14	21	18	—	V	—	No
California	D F In	C	B	3	18	16	21	18	—	S	—	No
Colorado	D	C	—	—	14	12	21	18	—	V	—	Yes
Connecticut	F	T	B	5[d]	16	16[a]	21	21	—	V	—	No
Delaware	D F In	C	B[a]	1[a,f]	18	16[b]	21	18	—	S	F	No
District of Columbia	F In	Cl	—	—	16	14	21	18		S	F	Yes
Florida	—	J	—	—	14	12	21	21	F	V	—	Yes
Georgia	D F In	P	O	5[c,d]	17	14	—	18	F	V	F	Yes
Idaho	D F In	Rd	—	—	14	12	18	18	—	S	—	Yes
Illinois	F In	C	—	—	18	16	21	18	—	Sf	F[a]	No
Indiana	D F In	Cl	—	—	18	16	21	18	F	S	F	Yes
Iowa	D F In	Cl	—	—	16	14	21	18	—	S	—	Yes
Kansas	D F In	P	—	—	18	16[a]	21	18	—	S	—	Yes
Kentucky	F In	C	—	—	14	12	21	21	F[a]	V	—	No
Louisiana	D V	Cl	—	—	14	12	21	21	O	V	F[a]	No
Maine	F In	T	—	5[d]	14	12	21	18	E	F	F	No
Maryland	F In	Cl	O	—	14	12	21	18	—	Sf	—	No
Massachusetts	D F In	T	O	5[d]	18	16[a]	21	18	E	V	F[a]	No

Michigan	D F In	C	—	5[d]	18	16[a]	—	18	O	V	—	Yes
Minnesota	D F In	Cl	O	—	18	16[a]	21	18	F	V	—	Yes
Mississippi	D F In	Cl	—	—	14	12	21	18	F	F	F	Yes
Missouri	F In	Rd	—	—	15	15[a]	21	21[b]	—	V	—	No
Montana	F In	Cl	N	—	18	16	21	18	—	S	F	Yes
Nebraska	D F In	J	—	—	18	16	21	21	—	S	—	No
Nevada	F In	C	O	—	18	16	21	18	—	F	—	Yes
New Hampshire	F In	T	—	5[d]	20	18[a]	20	18	O	V	—	No
New Jersey	D F In	Rr	B	2[b]	14	12	21	18	O	V	—	Yes
New Mexico	—	C	V	—	18	16	21	18	—	S	—	Yes
New York	D F In	T	B	—	16	14[e]	21	18[a]	F	V	—	Yes
North Carolina	F In V	Rg	—	—	16	14	18	18	—	F	F	No
North Dakota	D F In V	J	N	—	18	15	21	18	O	F	—	No
Ohio	F In	P	B[a]	—	18	16[a]	21	21	F	S	—	Yes
Oklahoma	D F In	Cl	N	—	18	15[a]	21	18	—	S	F	Yes
Oregon	D F In V	C	—	—	18	15	21	18	—	S	—	No
Pennsylvania	D F In	Cl	N	—	16	16[a]	21	21	—	V	—	Yes
Rhode Island	D F In	T	B	5[a,e]	14	12	21	21	E	V	—	Yes
South Carolina	F In	P	—	—	18	14	18	18	—	V	—	Yes
South Dakota	D F In	Cl	—	—	18	15	21	18	—	S	—	Yes
Tennessee	F In	Cl	—	—	14	12	18	18	—	S	F	No
Texas	D F In	C	—	—	16	14	21	18	—	Sf	—	Yes
Utah	D F In	C	—	—	16	14	21	18	F[a]	S	—	No
Vermont	D F In	T	—	5[a,d]	16	14[a]	21	18	O	V	F[a]	No
Virginia	D F In	Cl	—	—	14	12	21	21	F	Sf	F	No
Washington	D F In	A	—	—	14	15	21	18	—	S	—	No
West Virginia	D F In	Cl	—	—	18	16	21	21	F	S	F	No
Wisconsin	D F In V	C	N	5[d]	18	15	21	18	O	S	F[a]	No
Wyoming	D F In V	C	—	—	18	16	21	21	—	S	—	Yes

FOOTNOTE REFERENCES AND KEY TO ABBREVIATIONS IN PRECEDING TABLE

A dash (—) signifies no provision.

Column 1. Disqualifications Specified

D Remarriage forbidden too soon after divorce, or before a final decree of divorce, or in the case of a person divorced because guilty of adultery

F Feeble-mindedness or other mental defect, not including disqualifications of the common law (See p. 62)

In Insanity, not including disqualifications of the common law (See p. 62)

V A medical certificate showing freedom from a venereal disease required of male candidates

Column 2. License Issuer (the usual official when more than one is specified)

A County auditor

C County clerk (or clerk of the peace in Delaware) or clerk of the county

Cl Clerk of a specified county or district court

J County judge

P Probate judge

Rd County recorder

Rg County register

T Town or city clerk

Rr City or town registrar of vital statistics

Column 3. Who Must Apply in Person

B Both candidates

a. Exceptions on physician's affidavit

N Neither candidate

O One candidate

V Varies—no provision as regards candidates residing in or near the county seat; when candidates reside elsewhere in the county neither need apply personally.

— No provision. This includes states where the law specifies that the male or female candidate must apply for the license, but fails to require or clearly imply that such application must be made *in person.*

Column 4. Days of Advance Notice

a. Between license issuance and marriage

b. An additional day between license issuance and marriage

c. For persons under 21 years of age
d. Waivers granted on court order
e. When the female candidate is a non-resident of the state
f. Three additional days in case of non-residents of the state

Column 5. MINIMUM AGE (by statute, decision, or the common law)
a. Exceptions allowed on court order
b. Exceptions allowed without court order
c. Proof of age required for minors

Column 6. AGE UNDER WHICH PARENTAL CONSENT IS REQUIRED
a. Proof of age required for minors
b. This age, 21, based on an opinion of the Attorney General, is challenged by many license issuers who follow the statutory age of 18.

Column 7. RESIDENTIAL REQUIREMENTS (for residents of the state)
E Where each candidate resides
F Where the female candidate resides
O Where either candidate resides
a. If female candidate is a minor, not previously married

Column 8. ISSUERS PAID BY
S Salaries only in all marriage license districts
F Fees only in all marriage license districts
Sf Salaries only in all marriage license districts, but paid out of fees and presumably, therefore, limited by them
V Varying systems in the different marriage license districts

Column 9. OUT-OF-STATE EVASION
F Forbidden. Prohibitions implied in the common law only are not included.
a. Evasion Act, as recommended by the Commissioners on Uniform State Laws, adopted in whole or in part

Column 10. COMMON LAW MARRIAGES VALID
Yes. Valid
No. Not valid } So declared, either explicitly or impliedly, by statute or by court decision

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